

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5

6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
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13 :

14 - HIGHLY CONFIDENTIAL -
15

16 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
17 - - -
18

19 January 16, 2019
20 - - -
21

22 Videotaped deposition of
23 KEVIN MITCHELL, taken pursuant to notice,
24 was held at the Doubletree Resort by
 Hilton, 2400 Willow Street Pike,
 Lancaster, Pennsylvania, beginning at
 9:34 a.m., on the above date, before
 Michelle L. Gray, a Registered
 Professional Reporter, Certified
 Shorthand Reporter, Certified Realtime
 Reporter, and Notary Public.

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26 Ray Moore

27 LITIGATION TECHNICIAN:

28 Mike Kutys

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Testimony of:

KEVIN MITCHELL

By Mr. Simmer 12, 340, 343
By Ms. McEnroe 323, 341

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<p style="text-align: right;">Page 10</p> <p>1 - - -</p> <p>2 DEPOSITION SUPPORT INDEX</p> <p>3 - - -</p> <p>4</p> <p>5 Direction to Witness Not to Answer</p> <p>6 PAGE LINE</p> <p>7 None.</p> <p>8 Request for Production of Documents</p> <p>9 PAGE LINE</p> <p>10 None.</p> <p>11 Stipulations</p> <p>12 PAGE LINE</p> <p>13 None.</p> <p>14 Questions Marked</p> <p>15 PAGE LINE</p> <p>16 None.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 12</p> <p>1 examined and testified as follows:</p> <p>2 - - -</p> <p>3 EXAMINATION</p> <p>4 - - -</p> <p>5 BY MR. SIMMER:</p> <p>6 Q. Good morning, Mr. Mitchell.</p> <p>7 My name is Scott Simmer. I'm here -- I'm</p> <p>8 here to ask you some questions on behalf</p> <p>9 of the plaintiffs in this matter. Let me</p> <p>10 go over some of the ground rules before</p> <p>11 we get started. First of all, I'm going</p> <p>12 to be asking you a series of questions</p> <p>13 that you will answer. The court reporter</p> <p>14 is taking down a verbatim transcript of</p> <p>15 everything that we both say. So it's</p> <p>16 important that we don't talk over each</p> <p>17 other.</p> <p>18 Do you understand?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And that you have to answer</p> <p>21 verbally. You can't answer just by</p> <p>22 nodding your head. She cannot take that</p> <p>23 down on her transcript.</p> <p>24 Do you understand?</p>
<p style="text-align: right;">Page 11</p> <p>1 THE VIDEOGRAPHER: We are</p> <p>2 now on the record. My name is Ray</p> <p>3 Moore. I'm a videographer for</p> <p>4 Golkow Litigation Services.</p> <p>5 Today's date is January 16,</p> <p>6 2019, and the time is 9:34 a.m.</p> <p>7 This video deposition is</p> <p>8 being held in Lancaster,</p> <p>9 Pennsylvania, in the matter In Re</p> <p>10 National Prescription Opiate</p> <p>11 Litigation for the United States</p> <p>12 District Court for the Northern</p> <p>13 District of Ohio, Eastern</p> <p>14 Division, MDL No. 2804.</p> <p>15 The deponent is Kevin</p> <p>16 Mitchell.</p> <p>17 Counsel will be noted on the</p> <p>18 stenographic record.</p> <p>19 The court reporter is</p> <p>20 Michelle Gray and will now swear</p> <p>21 in the witness.</p> <p>22 - - -</p> <p>23 ... KEVIN MITCHELL, having</p> <p>24 been first duly sworn, was</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Yes, sir.</p> <p>2 Q. You need to answer fully and</p> <p>3 accurately and verbally as I say.</p> <p>4 Do you understand?</p> <p>5 A. Yes, sir.</p> <p>6 Q. If you don't understand a</p> <p>7 question that I've asked, ask me to</p> <p>8 rephrase. I will be glad to do that.</p> <p>9 Do you understand that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And when I say you must</p> <p>12 answer truthfully, you understand that</p> <p>13 there are penalties for failing to answer</p> <p>14 a question truthfully, correct?</p> <p>15 A. Yes.</p> <p>16 MS. McENROE: Objection to</p> <p>17 form.</p> <p>18 BY MR. SIMMER:</p> <p>19 Q. And that's called perjury.</p> <p>20 Do you understand that?</p> <p>21 MS. McENROE: Objection to</p> <p>22 form.</p> <p>23 You may answer.</p> <p>24 THE WITNESS: Yes, sir.</p>

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1 BY MR. SIMMER:

2 Q. You can request a break at
3 any time. I just ask if there's a
4 question pending, you answer the question
5 before you take a break. Is that fair?

6 A. Yes, sir.

7 Q. From time to time, counsel
8 sitting next to you will be lodging
9 objections. Unless they tell you not to
10 answer, you must still answer the
11 question.

12 Do you understand?

13 A. Yes, I do.

14 Q. Is there any reason why you
15 cannot testify truthfully and accurately
16 today?

17 A. No, sir.

18 Q. Are you taking any
19 medication that would interfere with your
20 ability to answer these questions
21 truthfully?

22 A. No, sir.

23 Q. What's your understanding of
24 why you are here today?

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1 A. My understanding is the role
2 that I had while I was at Rite Aid is why
3 I'm here.

4 Q. Have you reviewed any of the
5 pleadings in this case?

6 A. No, sir.

7 Q. Did you meet with attorneys
8 representing the company in preparation
9 for your deposition?

10 A. Yes.

11 Q. Who did you meet with?

12 A. With Elisa, Matt, and Kelly.

13 Q. And when did you meet with
14 them?

15 A. Yesterday.

16 Q. Any other occasions beyond
17 yesterday?

18 A. Maybe a month and a half,
19 two months ago.

20 Q. And how long did you meet
21 with them each time?

22 A. Back, October, November
23 approximately five hours. And yesterday
24 from 9:30 until about 5:30 yesterday

Page 16

1 evening.

2 Q. Are you being compensated
3 for your time to testify today?

4 A. No, sir.

5 Q. Did you retain Morgan Lewis
6 to be your counsel in this deposition?

7 A. Yes.

8 Q. Did you sign a retainer
9 agreement retaining them to represent you
10 today?

11 A. I have not.

12 Q. Did you get some kind of a
13 letter from them that you countersigned
14 of any kind where you agreed to have them
15 represent you today?

16 A. I have not signed, no.

17 Q. Are you paying them to be
18 your counsel today?

19 A. No, sir.

20 Q. Is it your understanding
21 that they are representing you or are
22 they representing Rite Aid?

23 A. They're rep --

24 MS. McENROE: Objection to

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1 form.

2 Go ahead.

3 THE WITNESS: Representing
4 Rite Aid.

5 BY MR. SIMMER:

6 Q. Have you been involved in
7 litigation before of any kind?

8 A. I have not.

9 Q. What about as a party in,
10 say, a bankruptcy?

11 A. No, sir.

12 Q. Any criminal proceedings?

13 A. No, sir.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 A. Nothing.
2 Q. -- of any kind?
3 A. No, sir.
4 Q. Again, you are going to have
5 to let me finish my questions before --
6 before you start answering.
7 Do you have any hardcopy
8 files of any kind?
9 A. No, sir.
10 Q. Your understanding, the
11 company provided certain documents that
12 were from your e-mail folders and other
13 folders from your time during your
14 employment with the company?
15 A. Yes, sir.
16 Q. Did you give any direction
17 to the Rite Aid's counsel about where to
18 get your materials?
19 A. No, sir.
20 (Document marked for
21 identification as Exhibit Rite Aid
22 Mitchell-1.)
23 BY MR. SIMMER:
24 Q. The court reporter has

6 Q. Have you been a witness in
7 any kind of litigation before?
8 A. No, sir.
9 Q. Ever testified in a
10 deposition?
11 A. No, sir.
12 Q. In advance of today's
13 deposition, did the company ask for you
14 to provide it copies of any documents
15 that you still had from your Rite Aid
16 employment?
17 A. No, sir.
18 Q. Do you still have any
19 documents from your time as an employee
20 of Rite Aid?
21 A. I do not.
22 Q. Not a computer of any kind?
23 A. No, sir.
24 Q. Hard drive --

1 handed you what we've marked as Mitchell
2 Exhibit Number 1. If you can take a look
3 at that for a moment. I'll ask you some
4 questions.

5 Are you done reviewing
6 the --

7 A. Yes, sir.

8 Q. -- document?

9 Again, you -- you let me
10 finish my question before you start to
11 answer.

12 This appears to be your
13 LinkedIn page, correct?

14 A. Yes, sir.

15 Q. And did you put the content
16 in here that describes what your
17 employment history has been?

18 A. Yes, sir.

19 Q. Does it appear to be
20 accurate?

21 A. Yes, sir.

22 Q. One area it does not cover
23 is your education background. Could you
24 tell us what your education background is

Page 22

1 starting with high school?
2 A. George Washington High
3 School, 1983 graduate.
4 Q. What town is that?
5 A. Danville, Virginia. Then I
6 attended Danville Community College,
7 1983, 1984, also in Danville, Virginia.
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 A. I joined the United States
23 Marine Corps.
24 Q. How long were you in the

Page 23

1 Marine Corps?
2 A. Just shy of seven years,
3 sir.
4 Q. And what was the highest
5 rank that you achieved?
6 A. Sergeant.
7 Q. And what were your
8 specializations in the Marine Corps?
9 A. I worked in the -- I was an
10 0151 which was an administrative clerk
11 and I -- at Camp Lejeune I was the
12 administrative chief, so I was in charge
13 of any and all admin duties as required
14 by the 10th Marine Regimental
15 Headquarters.
16 Then I moved -- my last role
17 was inspector/instructor staff, I&I duty,
18 in Allentown, Pennsylvania, where I was
19 responsible for training reservists.
20 Q. You received an honorable
21 discharge?
22 A. Yes, sir.
23 Q. What's your first employment
24 after you left the Marine Corps?

Page 24

1 A. I worked as a temp for
2 Manpower for just several months before I
3 started with Frito Lay.
4 Q. So on your LinkedIn page
5 that's Exhibit 1, it references that you
6 were senior office manager at PepsiCo.
7 Is that related to Frito Lay?
8 A. Frito Lay is owned by
9 PepsiCo, yes, sir.
10 Q. And what were your
11 responsibilities?
12 A. Started as the warehouse
13 manager in Easton, Pennsylvania. Got
14 promoted, moved to Williamsport,
15 Pennsylvania. Was the operations
16 manager. Had both packaging and
17 production. And then I moved into a
18 senior operations manager role also in
19 Williamsport in charge of the
20 distribution warehousing. And then I
21 relocated to York, Pennsylvania in 1999,
22 also as a senior operations manager over
23 transportation.
24 Q. And your last date of

Page 25

1 employment at Frito Lay was what?
2 A. I think it was June of
3 2000 -- 2000.
4 Q. And why did you leave that
5 position?
6 A. I was terminated.
7 Q. For what reason?
8 A. I was moving into a role
9 other than the one that I was in, and
10 word got out that I was moving before
11 that actually happened. And so they
12 terminated me because word got out,
13 although it didn't get out by me.
14 Q. I'm not sure I entirely
15 follow. Word got out that you were
16 moving from one position to another, and
17 they fired you for that?
18 A. Correct. I was told not to
19 say anything. I did not say anything.
20 Someone else -- it got out, and I got
21 accused of saying it, so they let me go.
22 Q. And what was your next
23 position after leaving Frito Lay?
24 A. I went to work at Rite Aid

<p style="text-align: right;">Page 26</p> <p>1 in September of 2000 as pharmacy support 2 manager. 3 Q. Was there a period of time 4 where you were out of work between the 5 Frito Lay job and Rite Aid? 6 A. Yes, sir. 7 Q. How many months? 8 A. From June to September. So 9 three months. 10 Q. And what were your 11 responsibilities as pharmacy support 12 manager? 13 A. To provide liaison between 14 the pharmacy distribution centers and 15 regulatory agencies, such as DEA, FDA, 16 cigarette, tobacco, auditors from 17 different states, and process 18 improvement. 19 Q. Did you actually manage some 20 employees in that position? 21 A. I did not. 22 Q. How did you receive training 23 to -- for your new job? 24 MS. McENROE: Objection to</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I don't recall. 2 Q. So he trained you how to 3 perform a distribution center audit; is 4 that correct? 5 A. A DEA audit, in particular. 6 Q. Okay. And what is it -- 7 what were you trained to do in a DEA 8 audit? 9 MS. McENROE: Objection to 10 form. Calls for a narrative. You 11 may answer. 12 THE WITNESS: Ron had a 13 checklist basically that was -- 14 that he had put together based on 15 the Code of Federal Regulations, 16 what's required by DEA. And that 17 was the document that we used to 18 audit the pharmacy control drug 19 cage and the pharmacy department. 20 BY MR. SIMMER: 21 Q. So when I asked you about 22 written materials, wouldn't that 23 checklist be one of the written materials 24 that would have been used in your</p>
<p style="text-align: right;">Page 27</p> <p>1 form. 2 MR. SIMMER: Strike that. 3 BY MR. SIMMER: 4 Q. Did you receive any training 5 for your new job? 6 A. Yes, I did. 7 Q. What kind of training did 8 you receive? 9 A. The former deputy director 10 of DEA, Ron Buzzeo, who owned his own 11 company, Buzzeo PDMA, actually came to 12 the Perryman, Maryland distribution 13 center and performed audits, training me 14 to do the same. 15 Q. So were you working out of 16 the Perryman facility at that time? 17 A. No, sir. 18 Q. Where were you working out 19 of? 20 A. Rite Aid headquarters. 21 Q. And where were they? 22 A. Camp Hill, Pennsylvania. 23 Q. Did you receive any written 24 materials as part of this training?</p>	<p style="text-align: right;">Page 29</p> <p>1 training? 2 A. That would be correct. 3 Q. So when I asked you did you 4 receive any written materials, the answer 5 would have been yes, correct? 6 MS. McENROE: Objection to 7 form. 8 THE WITNESS: Correct. 9 BY MR. SIMMER: 10 Q. Do you want to then change 11 your earlier answer? 12 A. Yes, sir. 13 Q. Who is your supervisor at 14 this time? 15 A. Neil Meischeid. 16 Q. Can you spell his last name, 17 please? 18 A. M-E-I-S-C-H-E-I-D. 19 Q. First name? 20 A. Neil, N-E-I-L. 21 Q. And who are you working for 22 at this time? 23 A. Rite Aid Headquarters 24 Corporation.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. What name is actually on 2 your paycheck that you receive? 3 A. Rite Aid Headquarters 4 Corporation. 5 Q. You didn't work for Rite Aid 6 of Maryland; is that correct? 7 A. Correct, sir. 8 Q. And Mr. Meischeid also 9 worked for Rite Aid Corporation 10 Headquarters, right? 11 A. Correct, sir. 12 Q. How long were you a pharmacy 13 support manager? 14 A. I believe it was two and a 15 half years. 16 Q. That would be from 2000 to 17 2002 or '3? 18 A. 2003, yes, sir. 19 Q. And what was your next 20 position? 21 A. Senior manager of regulatory 22 compliance. 23 Q. Were you performing 24 different duties than you had as a</p>	<p style="text-align: right;">Page 32</p> <p>1 remember. 2 Q. How do you spell Ms. Good's 3 last name? 4 A. G-O-O-D. 5 Q. And Mr. Caverley's last 6 name? 7 A. C-A-V-E-R-L-E-Y. 8 Q. And when you say you had 9 contact with them, what did you actually 10 do? 11 A. I don't recall. 12 Q. Was that face-to-face 13 contact? 14 A. Phone contact. 15 Q. How often did you have this 16 phone contact with these individuals? 17 A. Rarely. 18 Q. You said that you also had 19 contact with Rite Aid pharmacy 20 distribution centers; is that correct? 21 A. Yes, sir. 22 Q. What kind of contact was 23 this? 24 A. I perform mock audits at</p>
<p style="text-align: right;">Page 31</p> <p>1 pharmacist support manager? 2 A. No, sir. 3 Q. So the only change is the 4 title? 5 A. Yes, sir. 6 Q. When did you receive -- is 7 this a promotion by the way? 8 A. Yes, sir. 9 Q. When did you receive this 10 promotion? 11 A. 2003. 12 Q. Okay. And what were your 13 responsibilities as senior manager of 14 regulatory compliance? 15 A. The same as pharmacy support 16 manager. Liaison with the DEA and Rite 17 Aid pharmacy distribution centers. 18 Q. So that means that you had 19 direct contact with the DEA? 20 A. At times, yes, sir. 21 Q. And who at the DEA did you 22 have contact with? 23 A. Patricia Good, Mark 24 Caverley. They're the ones that I</p>	<p style="text-align: right;">Page 33</p> <p>1 their locations. 2 Q. And how often did you 3 perform these mock audits? 4 A. I would say an average of 5 one to two times annually. 6 Q. And what did you do when you 7 performed one of these mock audits? 8 A. I basically would go in 9 unannounced and ensure compliance with 10 the Code of Federal Regulations. 11 Q. And how did you do that? 12 A. With the checklist that was 13 provided from Mr. Buzzeo. 14 Q. Do you know how Mr. Buzzeo 15 developed that checklist? 16 A. I do not know. 17 Q. And that checklist that you 18 used, is that something that the company 19 had in its possession? 20 A. Yes, sir. 21 Q. Is that something that 22 others in the company also used as well, 23 besides yourself? 24 A. At times, yes, sir.</p>

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1 Q. How long was Mr. Buzzeo's
2 checklist used by the company?
3 A. Prior to my arrival, I would
4 say up to a year after I started, and
5 then I'd changed the checklist. I
6 updated it as new jurisdiction -- new
7 legislation was passed to ensure we were
8 current with current regulations.
9 Q. So the answer to my question
10 is that Mr. Buzzeo's checklist was used
11 for a period of time and then you changed
12 it; is that right?
13 A. That's correct, sir.
14 Q. When do you recall first
15 changing Mr. Buzzeo's checklist?
16 A. Early 2000s.
17 Q. You said as new legislation
18 was passed you changed the checklist to
19 ensure that you were up-to-date with
20 current regulations, correct?
21 A. Yes, sir.
22 Q. Where did you get the
23 information that you were using to base
24 your decision to make these changes?

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1 A. From the Code of Federal
2 Regulations.
3 Q. Did you receive any legal
4 training in order to read these
5 regulations to make these changes?
6 A. No, sir.
7 Q. Did you consult with any
8 other sources other than the regulations
9 themselves in order to make these
10 changes?
11 A. At times, Ron Buzzeo used to
12 also offer conferences where he would
13 provide counsel, document -- or counsel
14 or suggestions as to how we remained
15 compliant. So I may have taken a
16 suggestion from one of the conferences
17 and implemented it into our checklist.
18 Q. How often did you attend
19 these conferences?
20 A. During my tenure I probably
21 attended five or six conferences. So
22 every couple of years.
23 Q. You went every couple of
24 years?

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1 A. Yes, sir.
2 Q. And did he give written
3 materials to -- strike that.
4 Did the -- at the
5 conference, did you receive written
6 materials?
7 A. At times, yes. And at times
8 they would send via e-mail.
9 Q. And were those materials
10 then distributed to others in the
11 organization?
12 A. At times, yes.
13 Q. When was the first
14 conference that you attended?
15 A. I don't recall.
16 Q. What was the next position
17 that you held at Rite Aid?
18 A. Director of regulatory
19 compliance.
20 Q. And when did you receive
21 that title?
22 A. Two and a half years
23 afterwards, so 2005, 2006.
24 Q. What were your

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1 responsibilities?
2 A. The same.
3 Q. Just a different title?
4 A. Yes, sir.
5 Q. This is a promotion?
6 A. Yes, sir.
7 Q. And who did you report to in
8 this position?
9 A. Started with Robbie Roberson
10 who is the vice president of logistics.
11 And then in 2007 I reported to Rick
12 Chapman who is also the vice president of
13 logistics.
14 Q. So Mr. Roberson, can you
15 spell his last name, please?
16 A. R-O-B-E-R-S-O-N.
17 Q. So in this position as
18 director of regulatory compliance, as you
19 saw changes in the federal regulations,
20 again you would make changes in the
21 checklist that you would use to perform
22 your mock audits; is that correct?
23 A. If deemed appropriate, yes,
24 sir.

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1 Q. Did you ever provide copies
2 of your checklists to the company's legal
3 counsel?
4 MS. McENROE: Objection to
5 form. And I caution the witness
6 to be careful about not stepping
7 onto privileged issues and any
8 substance that you may have
9 discussed with counsel.
10 THE WITNESS: I -- I
11 honestly do not recall.
12 BY MR. SIMMER:
13 Q. Do you know whether Rite
14 Aid's legal counsel ever reviewed your
15 checklist?
16 A. I do not. I do not know.
17 Q. In your position as director
18 of regulatory compliance, did you ever
19 have any interaction with the company's
20 legal counsel?
21 A. I have had interaction, yes.
22 Q. About what should go into
23 your mock audits?
24 A. No, sir.

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1 Q. Did you have any interaction
2 with the company's compliance people?
3 A. Yes, sir.
4 Q. About the mock audits?
5 A. Define compliance people, if
6 you would, please, sir.
7 Q. Well, did the company have a
8 compliance function?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: They had
12 several. They have an internal
13 assurance department, and we also
14 had a privacy officer that was
15 part of the government affairs
16 department. And I've had
17 interaction with each.
18 BY MR. SIMMER:
19 Q. Did the work you did as
20 director of regulatory compliance overlap
21 with any of the company's compliance
22 personnel?
23 MS. McENROE: Objection.
24 BY MR. SIMMER:

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1 Q. What they were doing?
2 MS. McENROE: Objection to
3 form.
4 THE WITNESS: Yes.
5 BY MR. SIMMER:
6 Q. Which one of the compliance
7 functions did you overlap with?
8 A. Internal assurance.
9 Q. And so did you collaborate
10 with internal assurance on the mock
11 audits and the checklists that you were
12 describing?
13 A. On or about 2009, yes.
14 Q. And who did you interact
15 with in 2009?
16 A. There were various people.
17 Steven Sheinfeld, Ashley Kido, Bryan
18 Strahan, Curt Saleme.
19 Q. Can you spell
20 Mr. Sheinfeld's last name?
21 A. S-H-E-I-N-F-I-E-L-D (sic).
22 Q. And Ms. -- I guess Ashley,
23 what was her last name?
24 A. It was Kido when I left.

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1 K-I-D-O.
2 Q. Mr. Strahan, how do you
3 spell his last name?
4 A. S-T-R-A-H-A-N.
5 Q. And Mr. Strapell, how do you
6 spell his last name?
7 A. Mr. who?
8 Q. You said Curt. I didn't get
9 his last name.
10 A. Saleme.
11 Q. Saleme. I'm sorry. How do
12 you spell his last name?
13 A. S-A-L-E-M-E.
14 Q. And where were these -- what
15 department were these people employed in?
16 A. Internal assurance.
17 Q. And is that part of the
18 corporate headquarters in Camp Hill?
19 A. Yes, sir.
20 Q. And so the work that you did
21 on these mock audits, is that something
22 that you interacted with these people in
23 internal assurance on?
24 A. On or around 2009, yes, sir.

<p style="text-align: right;">Page 42</p> <p>1 Q. What happened in 2009 that</p> <p>2 you had interaction with these</p> <p>3 individuals?</p> <p>4 A. We collectively developed a</p> <p>5 compliance -- a CSA team. I don't recall</p> <p>6 what CSA stands for. But it was a</p> <p>7 collaboration between the supply chain</p> <p>8 department and the internal assurance</p> <p>9 department to perform audits at the 12</p> <p>10 distribution centers that Rite Aid had.</p> <p>11 Q. CSA, is that Controlled</p> <p>12 Substances Act?</p> <p>13 A. CSA would stand for that,</p> <p>14 yes, sir.</p> <p>15 Q. So what you were looking at</p> <p>16 is controlled substances; is that</p> <p>17 correct?</p> <p>18 MS. McENROE: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: Yes, sir.</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. Do you know what prompted</p> <p>23 the CSA team to be created?</p> <p>24 A. It was an idea that I</p>	<p style="text-align: right;">Page 44</p> <p>1 distribution center and do -- conduct an</p> <p>2 audit and actually feel comfortable that</p> <p>3 they knew what they were looking for.</p> <p>4 And basically every facet of the</p> <p>5 operation. So again, as an example, the</p> <p>6 transportation managers from one location</p> <p>7 may go to a different location to conduct</p> <p>8 an audit on transportation.</p> <p>9 Q. So I take it that these DEA</p> <p>10 coordinators would not audit the</p> <p>11 distribution centers where they worked?</p> <p>12 A. That's correct.</p> <p>13 Q. So they would go to a</p> <p>14 different distribution center and conduct</p> <p>15 the audit you're talking about?</p> <p>16 A. That's correct.</p> <p>17 Q. The CSA team that you're --</p> <p>18 you've just mentioned, was there any</p> <p>19 written product they created?</p> <p>20 A. Yes, sir.</p> <p>21 Q. What was this product</p> <p>22 called?</p> <p>23 A. There was a training that</p> <p>24 was conducted, and then there was</p>
<p style="text-align: right;">Page 43</p> <p>1 actually had that we could collaborate</p> <p>2 with the internal assurance group. There</p> <p>3 were audits conducted by them that we</p> <p>4 felt, as the supply chain team, that were</p> <p>5 a little inaccurate and felt that this</p> <p>6 was an opportunity to collaborate and</p> <p>7 utilize experts in the field within the</p> <p>8 Rite Aid distribution network to conduct</p> <p>9 audits at the distribution centers to</p> <p>10 again ensure that we continued to stay</p> <p>11 prepared for any and all audits.</p> <p>12 Q. When you say you were</p> <p>13 utilizing experts in the field. Are</p> <p>14 these external experts?</p> <p>15 A. No, sir.</p> <p>16 Q. So these were internal</p> <p>17 personnel?</p> <p>18 A. Rite Aid personnel, yes,</p> <p>19 sir.</p> <p>20 Q. And what kind of expertise</p> <p>21 are you talking about that they had?</p> <p>22 A. So DEA coordinators from</p> <p>23 each of the buildings where appropriate.</p> <p>24 So they could come into another pharmacy</p>	<p style="text-align: right;">Page 45</p> <p>1 checklists that were created as well.</p> <p>2 Q. So the training that was</p> <p>3 conducted, I take it there were</p> <p>4 written -- written materials for that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. What were those materials</p> <p>7 called or what -- what were they?</p> <p>8 MS. McENROE: Objection to</p> <p>9 form.</p> <p>10 THE WITNESS: I don't recall</p> <p>11 the proper name for them, but...</p> <p>12 BY MR. SIMMER:</p> <p>13 Q. And you say there were</p> <p>14 checklists created as well?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And what were -- what were</p> <p>17 those checklists called?</p> <p>18 A. I don't recall the proper</p> <p>19 name.</p> <p>20 Q. Do you know where these --</p> <p>21 either the training materials or the</p> <p>22 checklists, where they were housed at</p> <p>23 Rite Aid?</p> <p>24 A. The training material would</p>

<p style="text-align: right;">Page 46</p> <p>1 be housed by the internal assurance 2 group. I probably had a copy of it 3 myself. 4 The checklist was created by 5 multiple people within the headquarters 6 operation. We consolidated everything to 7 Steve Sheinfeld in internal assurance. 8 Bryan Strahan built the portfolio, the -- 9 the scorecard, if you will, that we used 10 to conduct audits. 11 Q. So you called it a checklist 12 a moment ago. Now, you are calling it a 13 scorecard or a portfolio. Which is it? 14 A. It -- it's a checklist that 15 at the conclusion of the audit provides a 16 score. 17 Q. So is it right that 18 Steven -- or Steve Sheinfeld was the 19 person who headed this effort? 20 A. I would say jointly. He -- 21 he headed it for the CSA team. 22 Q. Along with you? 23 A. Yes, sir. 24 Q. So did this fall in your</p>	<p style="text-align: right;">Page 48</p> <p>1 wall-to-wall audit at each 2 distribution center. 3 BY MR. SIMMER: 4 Q. Did you have any external 5 experts that you -- the company worked 6 with on any of these mock audit 7 activities that you've been describing? 8 A. As far as the CSA, no. We 9 did work with outside -- outside 10 counsel -- not counsel. Outside support 11 during an VAWD accreditation at some 12 point during the 2000s. 13 Q. Who was that? 14 A. I think her name was 15 Samantha Falter. She worked with Ron 16 Buzzeo group. 17 Q. Spell her last name? 18 A. F-A-L-T-E-R. 19 Q. She was part of Buzzeo, 20 correct? 21 A. Yes, sir. 22 Q. And what did she do to help 23 you in your -- your audit activities? 24 A. It wasn't audit activity,</p>
<p style="text-align: right;">Page 47</p> <p>1 actual job responsibilities, the work you 2 were doing with the CSA team? 3 A. Written responsibilities, 4 no, sir. 5 Q. So describe for us actually 6 what the CSA team did. 7 MS. McENROE: Objection to 8 form. 9 THE WITNESS: We -- the CSA 10 team would actually go out to each 11 Rite Aid distribution center. 12 We created two teams. There 13 was a red team. There was a blue 14 team. And each team was 15 designated six Rite Aid DCs to 16 audit throughout the course of the 17 year. 18 So each month there would be 19 a rotating basis where the red 20 team would audit January, March, 21 May, et cetera. 22 Blue team would be 23 alternating months. And they 24 would go -- conduct a full</p>	<p style="text-align: right;">Page 49</p> <p>1 sir. It was actually just creating a 2 standard operating procedure for VAWD 3 accreditation. 4 Q. What is VAWD accreditation? 5 A. I don't recall what VAWD 6 stands for. However, it was an 7 accreditation that the State of Indiana 8 required for legend drugs. 9 Q. So you created some standard 10 operating procedures; is that correct? 11 A. Yes, sir. 12 Q. And what were those called? 13 A. Did I create them? Let me 14 back up if I could please. 15 There were procedures in 16 place when I started. They were 17 regulatory guidelines. 18 Q. And were those SOPs? 19 A. In an essence, yes, sir. 20 Q. Were they written down? 21 A. Yes, sir. 22 Q. And what were they called? 23 A. Regulatory guidelines is 24 what I recall.</p>

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1 Q. And did those change over
2 time?
3 A. Yes, sir.
4 Q. Who was responsible for --
5 for updating those regulatory guidelines?
6 A. That would be me.
7 Q. Throughout your time period,
8 that was your responsibility?
9 A. Yes, sir.
10 Q. And Ms. Falter helped you
11 review those procedures?
12 A. No, sir.
13 Q. I'm sorry, I thought you
14 said she helped you with the
15 accreditation that you were receiving.
16 A. That was VAWD accreditation,
17 not regulatory guidelines. That was
18 totally separate procedures.
19 Q. And what did she actually
20 do?
21 A. She drafted SOPs to be
22 compliant with the VAWD accreditation
23 needs.
24 Q. And this is accreditation

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1 for the State of Indiana?
2 A. Yes, sir.
3 Q. Was it only for your
4 distribution center in Indiana?
5 A. And Perryman, Maryland.
6 Q. And why did you need that
7 for Perryman, Maryland, since it's not
8 located in Indiana?
9 A. Perryman distributed to
10 Indiana.
11 Q. And where else did Perryman
12 distribute?
13 A. I don't recall every state.
14 Q. And what kind of changes
15 resulted as a part of the accreditation
16 procedure that you were going through the
17 VAWD accreditation?
18 A. I don't recall any changes
19 that -- that took place.
20 Q. So it's unclear to me what
21 exactly she did then when she came and
22 helped you with this accreditation?
23 A. She just simply drafted a
24 different set of SOPs that VAWD required

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1 for accreditation. And I guess it had
2 something to do with their licensure, or
3 us being able to renew our licensure with
4 Indiana.
5 I believe it was more of a
6 formatting issue than -- than anything.
7 Q. So the SOPs covered
8 formatting only?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: I don't recall
12 specifically.
13 BY MR. SIMMER:
14 Q. You don't recall
15 specifically what the SOPs covered?
16 A. Those SOPs, no, sir.
17 Q. What type frame was it that
18 she -- you were going through this VAWD
19 accreditation?
20 A. I don't recall.
21 Q. Okay. What was your next
22 job at Rite Aid?
23 A. Senior director of
24 regulatory compliance.

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1 Q. And when did you receive
2 that job promotion?
3 A. December 2010.
4 Q. And I called that a
5 promotion. I assumed it was a promotion.
6 A. Yes, sir.
7 Q. Did your duties change?
8 A. I assumed responsibility
9 over pharmacy returns as well as my
10 current responsibilities.
11 Q. Had someone else been doing
12 that to that point?
13 A. Yes, sir.
14 Q. So was this taking on
15 additional responsibilities for you?
16 A. Yes, sir.
17 Q. Did you have people
18 reporting to you in this position?
19 A. Yes, sir.
20 Q. How many people?
21 A. Three.
22 Q. Who were they?
23 A. Kevin Peterson. I don't
24 remember the -- the last name, Dawn. I

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1 honestly do not recollect her last name.
2 And the third person I can't -- Rich
3 Handy was the third person.
4 Q. Rich Handy?
5 A. Yes, sir.
6 Q. Okay. And were you still
7 working out of Camp Hill at this time?
8 A. Yes, sir.
9 Q. And who was your supervisor?
10 A. Rick Chapman.
11 Q. Do you know who
12 Mr. Chapman's supervisor was?
13 A. Wilson Lester.
14 Q. And in turn who is
15 Mr. Lester's supervisor?
16 A. It changed so frequently,
17 I -- I don't recall.
18 Q. So what department were --
19 was this function that you were
20 performing housed in at the time?
21 A. Supply chain in Camp Hill,
22 Pennsylvania.
23 Q. And you had responsibility
24 for all the distribution centers that the

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1 company owned throughout the country?
2 A. Not direct responsibility,
3 but I -- my job was to basically work
4 with them and help prepare them for any
5 regulatory audits that may occur.
6 Q. Were there any distribution
7 centers that you were not responsible
8 for?
9 A. No, sir.
10 Q. And in turn those
11 distribution centers distributed
12 pharmaceuticals to all of the Rite
13 Aid-owned pharmacies around the United
14 States, correct?
15 A. Yes --
16 MS. McENROE: Objection to
17 form.
18 THE WITNESS: Yes, sir.
19 BY MR. SIMMER:
20 Q. And again at this time you
21 were working for the parent company at --
22 in Camp Hill, correct?
23 A. Yes, sir. That's the only
24 company I worked for during my tenure

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1 with Rite Aid.
2 Q. What was your next job at
3 Rite Aid?
4 A. That was the last job at
5 Rite Aid.
6 Q. When did you leave your
7 employment?
8 A. January 2012.
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 MR. SIMMER: It's a
6 completely improper objection.
7 MS. McENROE: Okay. We can
8 call Special Master Cohen if you'd
9 like.
10 BY MR. SIMMER:
11 Q. How did -- how did --
12 MR. SIMMER: You can.
13 MS. McENROE: Yeah, we can
14 go off the record and call the
15 special master.
16 BY MR. SIMMER:
17 Q. How did these personal --
18 MS. McENROE: We're going to
19 stop the deposition and call the special
20 master.
21 THE VIDEOGRAPHER: The time
22 is now 10:14 a.m. We're going off
23 the record.
24 (Whereupon, a discussion was

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1 held off the record.)
2 THE VIDEOGRAPHER: The time
3 is now 10:17 a.m. We are back on
4 the record.
5 BY MR. SIMMER:
6 Q. I'm going to withdraw the
7 last question. Was there anything about
8 the job itself that you felt that you
9 could no longer perform?
10 A. No, sir.
11 Q. And when you left your
12 employment at Rite Aid, what did you do
13 next?
14 A. My next position was general
15 manager at CEVA Logistics.
16 Q. Was there a gap in
17 employment between the job you had at
18 Rite Aid and the job that you had at CEVA
19 Logistics?
20 A. Yes, sir.
21 Q. How long?
22 A. Just shy of four months.
23 Q. What were you doing at CEVA
24 Logistics?

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1 A. And general manager of a
2 third-party logistics firm, supporting
3 the startup of a Microsoft business.
4 Q. And where was that job?
5 A. In Carlisle, Pennsylvania.
6 Q. And you left that job after
7 six months, you say?
8 A. Thereabouts, yes, sir.
9 Q. Why did you leave that job?
10 A. I resigned to assume a
11 position with Crescent Park.
12 Q. Crescent Park is the name of
13 the company?
14 A. Yes, sir.
15 Q. And what were you doing
16 there?
17 A. General manager as well.
18 Q. In Mechanicsburg,
19 Pennsylvania, correct?
20 A. Yes, sir.
21 Q. How long did you hold that
22 position?
23 A. Until the end of May, June
24 of 2013.

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 Q. And what was your next
16 position after that?
17 A. General manager with my
18 current employer, 48forty Solutions. And
19 just to clarify, they've had -- that's
20 the third name since I've worked there.
21 It started out as IFCO Systems, then
22 became CHEP Recycled, and now 48forty
23 Solutions.
24 Q. What were your

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1 responsibilities there?
2 A. Oversight over a pallet
3 recycling manufacturing company, and I'm
4 in charge of both purchasing recycled
5 pallets and the sale of recycled pallets
6 to retailers throughout the country.
7 Q. So your responsibility as
8 general manager is for the entire
9 company?
10 A. For the entire --
11 Pennsylvania, for Biglerville,
12 Pennsylvania.
13 Q. But the pallets themselves
14 are being sold to retailers throughout
15 the United States?
16 A. Yes.
17 Q. And your responsibility is
18 only for Pennsylvania?
19 A. Pennsylvania, Maryland. We
20 can ship anywhere in the U.S.
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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Age Group	Should Take Action (%)	Should Not Take Action (%)
18-29	95	5
30-49	95	5
50-69	95	5
70+	95	5

15 MR. SIMMER: Can we go off
16 the record for a minute.

17 THE VIDEOGRAPHER: The time
18 now is 10:22 a.m. We are going
19 off the record.

20 (Short break.)

21 THE VIDEOGRAPHER: The time
22 is now 10:42 a.m. We are back on
23 the record.

24 BY MR. SIMMER:

■ [REDACTED]
 ■ [REDACTED]
 ■ [REDACTED]

4 Before our break, you
5 mentioned that there was a corporate
6 assurance department; is that right?

7 A. Internal assurance
8 department, yes, sir, at the corporate
9 office.

10 Q. That was its formal title
11 was the, internal assurance department?

12 A. Internal assurance or
13 internal audit. Either one. I'm not --
14 I'm not sure.

15 Q. And while it -- while you
16 worked at Rite Aid, was that its name
17 throughout that time period?

18 A. As far as I recall, yes,
19 sir.

20 Q. What were the specific
21 functions as you know it for the internal
22 assurance department?

MS. McENROE: Objection to
form.

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1 THE WITNESS: To conduct
2 independent audits of the
3 distribution centers. I know, as
4 it relates to the supply chain
5 group, that's what they did.

6 As far as their other jobs,
7 I have no idea.

8 BY MR. SIMMER:

9 Q. It sounds like that those
10 functions overlapped with what you were
11 doing, correct?

¹² A. They could, yes.

13 Q. Had the responsibilities of
14 the internal assurance department changed
15 over time while you worked at the
16 company?

MS. McENROE: Objection to
form.

19 THE WITNESS: I don't recall
20 them being involved with the
21 distribution centers until later
22 in the 2000s, 2007, 2008 time
23 frame.

24 BY MR. SIMMER:

<p style="text-align: right;">Page 66</p> <p>1 Q. So after that time period, 2 they were responsible for audits of 3 distribution centers, correct? 4 MS. McENROE: Objection to 5 form. 6 THE WITNESS: They could 7 have been all along. That's just 8 what I remember. 9 BY MR. SIMMER: 10 Q. Did they have responsibility 11 for all of the Rite Aid entities? 12 MS. McENROE: Objection to 13 form. 14 BY MR. SIMMER: 15 Q. Strike that. Let me 16 rephrase. 17 Did the corporate assurance 18 department or the internal assurance 19 department have responsibility for all of 20 the Rite Aid distribution centers 21 following that time period? 22 MS. McENROE: Objection to 23 form. 24 THE WITNESS: I do not know.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Tony Bellezza. 2 Q. Can you spell his last name, 3 please? 4 A. I will attempt. 5 B-E-L-L-E-Z-Z-A. 6 Q. Is he still working for the 7 company as far as you know? 8 A. I do not know. 9 Q. And did he hold that title 10 or was he -- strike that. 11 Was he head of the internal 12 assurance department throughout the time 13 period that you worked at the company? 14 A. As far as I can recall, yes. 15 Q. Did he hold that position 16 when you left the company? 17 A. Yes. 18 Q. Help us understand. It 19 looks like they overlap with you pretty 20 substantially. It seems like it would be 21 a confusing structure. Were they -- was 22 that function completely separate from 23 yours or are you basically working doing 24 the same responsibilities?</p>
<p style="text-align: right;">Page 67</p> <p>1 BY MR. SIMMER: 2 Q. Did they have any 3 responsibility for suspicious order 4 monitoring? 5 MS. McENROE: Objection to 6 form. 7 THE WITNESS: I do not know. 8 BY MR. SIMMER: 9 Q. Who would we need to talk to 10 that would clarify what their 11 responsibilities were? 12 A. One of the associates in 13 internal assurance. 14 Q. Where was the internal 15 assurance department housed within the 16 company structure? 17 A. At headquarters, the Annex 18 building in Camp Hill, Pennsylvania. 19 Q. I'm talking about the org 20 chart. What department were they part 21 of? 22 A. That, I do not know. 23 Q. Do you know who the head of 24 the internal assurance department was?</p>	<p style="text-align: right;">Page 69</p> <p>1 MS. McENROE: Objection to 2 form. 3 THE WITNESS: Completely 4 different functions. 5 BY MR. SIMMER: 6 Q. Based on your work as senior 7 director, supply chain regulatory 8 compliance, is it fair to say that you're 9 familiar with the term "diversion" in the 10 context of controlled substances? 11 A. Yes, sir. 12 Q. What does diversion mean in 13 your own words? 14 A. Diverting from a normal 15 course of action. 16 Q. And based on your knowledge 17 and experience, you'd agree with me Rite 18 Aid had an obligation to prevent 19 diversion? 20 MS. McENROE: Objection to 21 form. 22 THE WITNESS: Yes, sir. 23 BY MR. SIMMER: 24 Q. As senior director of supply</p>

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1 chain regulatory compliance, you
2 understand that the DEA required that
3 Rite Aid prevent diversion?
4 MS. McENROE: Objection to
5 form.
6 THE WITNESS: Yes, sir.
7 BY MR. SIMMER:
8 Q. And based on your work and
9 experience, you are familiar with the
10 concept of a "suspicious order" in the
11 context of controlled substances?
12 MS. McENROE: Objection to
13 form.
14 THE WITNESS: Yes, sir.
15 BY MR. SIMMER:
16 Q. And what does it mean?
17 A. Suspicious would be
18 anything, just that, suspicious.
19 Q. Can you clarify what you
20 mean by a suspicious order?
21 A. Anything abnormal.
22 Q. Where did you gain your
23 understanding about what a suspicious
24 order was?

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1 A. Through training with Ron
2 Buzzeo.
3 Q. Would that be only at the
4 conferences that you attended?
5 A. It really started when Ron
6 came to train me two months into my
7 employment.
8 Q. Back in 2000?
9 A. Yes, sir.
10 Q. How extensive was that
11 training with Mr. Buzzeo?
12 A. I like to think it was
13 pretty extensive. We spent three or
14 four days together going through his
15 checklist, not just auditing, but
16 explaining really what the spirit of the
17 regulations mean, and then how to ensure
18 that, you know, as a registrant that they
19 were doing the things needed to do to be
20 compliant with all the rules and
21 regulations set forth.
22 Q. So let me clarify this. You
23 received three or four days of training
24 in 2000 when you first began working for

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1 Rite Aid, correct?
2 A. That's correct, sir.
3 Q. Did you have any additional
4 training with Mr. Buzzeo up until those
5 conferences you talked about, that you
6 attended later?
7 A. Yes.
8 Q. And what kind of training
9 did you receive from Mr. Buzzeo in that
10 interval in between?
11 A. Just the exact same things.
12 Q. He came back?
13 A. Yes, sir.
14 Q. And trained you
15 additionally?
16 A. We worked together
17 additionally, yeah. So I can give you an
18 example. When I first got there, in --
19 well, 2000 -- in November 2000 Ron and I
20 performed the training. He performed the
21 training with me. The results were what
22 they were.
23 And I invited him to come
24 back in six months and do a re-audit and,

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1 you know, give us a chance to treat
2 our -- address any deficiencies so that
3 six months from now when you come back,
4 you should see a different story.
5 So four months after the
6 fact I called Ron and invited him back
7 and told him we were ready.
8 Ron came back a week or two
9 after our phone call and conducted
10 another audit. He conducted the audit
11 with me there, again asking questions,
12 trying to continue to learn and found no
13 deficiencies.
14 Q. So what was he auditing when
15 he came back the second time?
16 A. Could you rephrase? I'm
17 sorry.
18 Q. You said he conducted a
19 re-audit. What was he actually auditing?
20 A. The control drug cage and
21 all the processes, the SOPs, biennial
22 inventories, you name at --
23 Q. At Perryman?
24 A. -- accountability -- yes,

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1 sir, at Perryman.
2 Q. Okay. So when he first
3 trained you in 2000, he actually
4 conducted an audit of Perryman at that
5 time?
6 A. Yes, sir.
7 Q. I take it that that wasn't a
8 positive audit?
9 A. That would be correct, sir.
10 Q. What were the deficiencies
11 that you recall he noted in -- in 2000?
12 A. I -- I don't recall
13 individual.
14 Q. Was there a written report
15 that he prepared?
16 A. Yes, sir.
17 Q. And is that something that
18 the company retained in its records as
19 far as you know?
20 A. I would assume but I do not
21 know for sure.
22 Q. When he came back, I guess
23 was it four months or six months later?
24 A. Four months.

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1 Q. Did he prepare a report at
2 that time?
3 A. Yes, sir.
4 Q. And again, that was only of
5 the Perryman facility, correct?
6 A. That's correct.
7 Q. And specifically in regard
8 to controlled substances, correct?
9 A. That's correct.
10 Q. And he found, you said no
11 deficiencies, correct?
12 A. Correct.
13 Q. Do you know what he actually
14 did in conducting that audit?
15 MS. McENROE: Objection to
16 form.
17 THE WITNESS: He basically
18 did the exact same thing the DEA
19 audits -- or DEA agents did later
20 in my tenure. Did a very
21 comprehensive audit of the entire
22 control drug cage, security,
23 records, et cetera.
24 BY MR. SIMMER:

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1 Q. Did he conduct any audits
2 of -- at other distribution centers?
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: I don't know
6 for sure if he himself did. I
7 know his company did.
8 BY MR. SIMMER:
9 Q. So it's your belief that --
10 that others with Buzzeo conducted audits
11 at the distribution centers?
12 MS. McENROE: Objection to
13 form.
14 THE WITNESS: I believe that
15 would be correct.
16 BY MR. SIMMER:
17 Q. Do you know when they did
18 this?
19 A. That I do not know.
20 Q. Do you know who it was at
21 Buzzeo that did these audits of the other
22 distribution centers?
23 A. I recall one name, Ron
24 Garribato.

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1 Q. You better spell that name.
2 A. G-A-R-R-I-B-A-T-O.
3 Q. And do you know what his
4 title was at Buzzeo?
5 A. I do not.
6 Q. Do you know when he did
7 this?
8 A. I can recall early 2000s.
9 Q. And which distribution
10 center did he audit?
11 A. Woodland, California.
12 Q. Why was that one audited?
13 A. It was just, again, a mock
14 audit.
15 Q. And throughout the time
16 period when you worked at the company,
17 you undertook these same kind of mock
18 audits, correct?
19 A. Yes, sir.
20 Q. And you did essentially the
21 same kind of -- of procedures as
22 Mr. Buzzeo had trained you, correct?
23 A. That's correct.
24 Q. Did you actually write up

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1 reports after you did each of these mock
2 audits?
3 A. I honestly do not recall.
4 Q. Did you put anything in
5 writing when you -- after you conducted a
6 mock audit at a distribution center?
7 A. I may have given the
8 checklist to them that I had used during
9 my time there. It's just been so many
10 years ago, I just honestly don't remember
11 all the details.
12 Q. So how long was the
13 checklist that you used?
14 A. I don't recall how many
15 pages.
16 Q. Was there a scoring system
17 of any kind in the checklist?
18 A. Initially, no.
19 Q. There was later a scoring
20 system of some kind used?
21 A. The -- the certified
22 self-assessment that we were talking
23 about earlier with internal assurance,
24 that did have a scoring system with it.

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1 Q. And when did you put in
2 place that scoring system?
3 A. Say approximately 2009.
4 Q. Was that in conjunction with
5 the -- the changes that you talked about
6 earlier with the controlled substances
7 team?
8 MS. McENROE: Objection to
9 form.
10 THE WITNESS: Would --
11 MR. SIMMER: Strike that.
12 BY MR. SIMMER:
13 Q. Was that in conjunction with
14 the changes you'd talked about earlier
15 with the CSA team?
16 A. Yes, sir.
17 Q. That you put the scoring
18 system into place as part of the changes
19 that the CSA team had implemented,
20 correct?
21 A. That's correct.
22 Q. Based on your work as senior
23 director supply chain regulatory
24 compliance, you'd agree that Rite Aid had

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1 an obligation to report any suspicious
2 orders to the DEA, right?
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: Yes, sir.
6 BY MR. SIMMER:
7 Q. And did that, in fact,
8 happen, that the company reported any
9 suspicious orders to the DEA while you
10 were the senior director supply chain
11 regulatory compliance?
12 MS. McENROE: Objection to
13 form.
14 THE WITNESS: I'm not aware
15 of any suspicious orders during my
16 tenure.
17 BY MR. SIMMER:
18 Q. That wasn't my question.
19 Were there any reports to the DEA?
20 A. Not that I'm aware of.
21 Q. Based on your work as senior
22 director supply chain regulatory
23 compliance, you'd agree that Rite Aid had
24 an obligation not to ship any suspicious

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1 orders, right?
2 MS. McENROE: Objection to
3 form.
4 THE WITNESS: Yes, sir.
5 BY MR. SIMMER:
6 Q. Are you aware of any
7 instance when the company refused to ship
8 what it felt was a suspicious order?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: I'm not aware,
12 no, sir.
13 BY MR. SIMMER:
14 Q. So that never happened as
15 far as you know?
16 A. As far as I know.
17 Q. Based on your work as senior
18 director supply chain regulatory
19 compliance, do you know what the DEA red
20 flags for diversion are?
21 MS. McENROE: Objection to
22 form.
23 THE WITNESS: Could you ask
24 the question a different way

<p style="text-align: right;">Page 82</p> <p>1 please?</p> <p>2 BY MR. SIMMER:</p> <p>3 Q. Do you know what the term --</p> <p>4 are you familiar with the term "red flags</p> <p>5 of diversion"?</p> <p>6 A. I am not.</p> <p>7 Q. Never heard of that before?</p> <p>8 A. I have not.</p> <p>9 Q. You never heard the DEA's</p> <p>10 red flags for potential diversion?</p> <p>11 MS. McENROE: Objection to</p> <p>12 form. Asked and answered.</p> <p>13 THE WITNESS: I have not.</p> <p>14 BY MR. SIMMER:</p> <p>15 Q. So I take it that you in</p> <p>16 your position as senior director supply</p> <p>17 chain regulatory compliance did nothing</p> <p>18 to monitor any of the DEA red flags for</p> <p>19 diversion, correct?</p> <p>20 MS. McENROE: Objection to</p> <p>21 form.</p> <p>22 THE WITNESS: That's</p> <p>23 inaccurate.</p> <p>24 BY MR. SIMMER:</p>	<p style="text-align: right;">Page 84</p> <p>1 form. Misstates testimony.</p> <p>2 THE WITNESS: I would say</p> <p>3 "red flag" being the keyword,</p> <p>4 again not familiar with the term.</p> <p>5 So I would say no.</p> <p>6 BY MR. SIMMER:</p> <p>7 Q. During your time as senior</p> <p>8 director supply chain regulatory</p> <p>9 compliance, Rite Aid distributed</p> <p>10 controlled substances, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And it distributed these</p> <p>13 controlled substances only to Rite Aid</p> <p>14 stores, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. During your time as a Rite</p> <p>17 Aid employee, did it have a suspicious</p> <p>18 order monitoring program?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Can you describe what that</p> <p>21 program was?</p> <p>22 A. It was to -- I don't recall</p> <p>23 the exact verbiage. But it was basically</p> <p>24 to identify anything that seemed</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. How is it inaccurate?</p> <p>2 A. We had policies and</p> <p>3 procedures in place that -- for excessive</p> <p>4 order monitoring.</p> <p>5 Q. Okay. I asked you a moment</p> <p>6 ago if you were familiar with the DEA red</p> <p>7 flags for diversion and you said you were</p> <p>8 not, correct?</p> <p>9 A. I have not heard the term</p> <p>10 "red flag," that's correct.</p> <p>11 Q. So I then asked you if you</p> <p>12 had undertaken any monitoring of the red</p> <p>13 flags for diversion. And you said that</p> <p>14 you feel like you had.</p> <p>15 A. Monitoring to diversion,</p> <p>16 yes. Monitoring red flags, I would have</p> <p>17 to say no. Again, I'm not familiar --</p> <p>18 I'm sorry, not familiar -- not familiar</p> <p>19 with the term.</p> <p>20 Q. So the answer to my</p> <p>21 question, did you do any monitoring of</p> <p>22 the red flags of diversion, the answer</p> <p>23 would be no; isn't that right?</p> <p>24 MS. McENROE: Objection to</p>	<p style="text-align: right;">Page 85</p> <p>1 suspicious, out of the ordinary. And if</p> <p>2 a suspicious order was detected, the</p> <p>3 registrant would then call the government</p> <p>4 affairs department at the corporate</p> <p>5 headquarters in which they would report</p> <p>6 directly to DEA.</p> <p>7 Q. Let's clarify what you mean</p> <p>8 by -- who is the registrant in -- in what</p> <p>9 you just described?</p> <p>10 A. So Rite Aid of Maryland in</p> <p>11 Perryman's case.</p> <p>12 Q. And if Rite Aid of Maryland</p> <p>13 became aware of a suspicious order, they</p> <p>14 would call government affairs at -- at</p> <p>15 corporate headquarters and they would</p> <p>16 report directly to the DEA, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Did that ever happen to your</p> <p>19 knowledge?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. Explain what you mean by any</p> <p>22 suspicious order as being out of the</p> <p>23 ordinary, what did you mean by that term?</p> <p>24 A. Suspicious to me means</p>

<p style="text-align: right;">Page 86</p> <p>1 anything that's -- that is outside of a 2 normal pattern. 3 Q. And how would you determine 4 that an order was out of the ordinary 5 pattern? 6 MS. McENROE: Objection to 7 form. 8 THE WITNESS: It could be 9 the size of the order. It could 10 be the frequency of the order. 11 That to me would get my attention. 12 BY MR. SIMMER: 13 Q. And what would be a size of 14 an order that you would have deemed to 15 have been suspicious? 16 MS. McENROE: Objection to 17 form. 18 THE WITNESS: I don't 19 personally know. I didn't work at 20 the distribution center. 21 BY MR. SIMMER: 22 Q. But it was your 23 responsibility to identify suspicious 24 orders, correct?</p>	<p style="text-align: right;">Page 88</p> <p>1 every day in large quantities for 2 the same item, again, that 3 would -- that would get my 4 attention. 5 BY MR. SIMMER: 6 Q. Did that ever happen? 7 A. Not that I recall. 8 Q. So during the time that you 9 worked for the company, you have no 10 recollection of anytime there have been 11 an order that was identified as being 12 suspicious because it was too frequent, 13 right? 14 A. I do not. 15 Q. At any time while you worked 16 for the company as the director of supply 17 chain regulatory compliance, were there 18 any orders that were deemed to have been 19 suspicious that were reported to the DEA 20 or to government affairs? 21 MS. McENROE: Objection to 22 form. 23 THE WITNESS: Not that I'm 24 aware of.</p>
<p style="text-align: right;">Page 87</p> <p>1 MS. McENROE: Objection to 2 form. 3 THE WITNESS: It was the 4 distribution center's 5 responsibility to identify 6 suspicious orders. 7 BY MR. SIMMER: 8 Q. What was your role in 9 identifying suspicious orders? 10 A. Again, I didn't work at the 11 distribution center. So I would not have 12 had visibility over suspicious orders, or 13 any orders for that matter. 14 My role would have been to 15 have had a policy or procedure in place. 16 Q. And what did the policy and 17 procedure say was a suspicious order? 18 A. I don't recall the verbiage. 19 Q. What about the frequency of 20 an order would make it suspicious? 21 MS. McENROE: Objection to 22 form. 23 THE WITNESS: If I were at a 24 DC and if I were seeing an order</p>	<p style="text-align: right;">Page 89</p> <p>1 BY MR. SIMMER: 2 Q. And I'm right that the 3 system that Rite Aid used was a 4 threshold-based system? 5 MS. McENROE: Objection to 6 form. 7 THE WITNESS: Yes, sir. 8 BY MR. SIMMER: 9 Q. And it measured the volume 10 of the shipments only, correct? 11 MS. McENROE: Objection to 12 form. 13 THE WITNESS: As far as I 14 know, yes, sir. 15 (Document marked for 16 identification as Exhibit Rite Aid 17 Mitchell-2.) 18 BY MR. SIMMER: 19 Q. I'll hand you what we've 20 marked as Mitchell Exhibit Number 2. 21 A. Thank you. 22 Q. I'll identify it for the 23 record as an e-mail from you dated 24 January 28, 2008, to a group of</p>

<p style="text-align: right;">Page 90</p> <p>1 individuals. Bates number 2 Rite_Aid_OMDL_0016954. 3 Take a moment to review that 4 if you could, please. 5 A. Yes, sir. Okay. 6 Q. Do you see it's an e-mail 7 from you to a group of individuals? 8 A. Yes, sir. 9 Q. Do you know who the 10 addressees are that you were sending this 11 e-mail to? 12 A. Yes, sir, I do. 13 Q. And what functions were 14 they? 15 A. They were both the pharmacy 16 department managers and DEA coordinators 17 of the Rite Aid DCs. 18 Q. So all of the Rite Aid 19 distribution centers that you're sending 20 this to? 21 MS. McENROE: Objection to 22 form. 23 THE WITNESS: The Rite Aid 24 distribution centers that</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. They had the same policies 2 and procedures regarding how to 3 distribute controlled substances, 4 correct? 5 A. That's correct. 6 Q. They had the same policies 7 and procedures regarding how to comply 8 with the C.F.R. provisions regarding 9 controlled substances, correct? 10 A. Yes, sir. 11 Q. And they had the same 12 policies and procedures regarding 13 thresholds for controlled substances, 14 correct? 15 A. If I can clarify the e-mail. 16 This was during a time where Rite Aid had 17 just acquired the Brooks Eckerd 18 distribution centers, which is why I'm 19 probably asking these questions, because 20 during this time we were also 21 transitioning those distribution centers 22 to do exactly what you just mentioned, 23 fall under one umbrella, have one set of 24 policies and procedures that were Rite</p>
<p style="text-align: right;">Page 91</p> <p>1 distribute pharmaceuticals. 2 BY MR. SIMMER: 3 Q. Okay. And did these 4 individuals work for the corporate Rite 5 Aid or do they work for a different Rite 6 Aid? 7 MS. McENROE: Objection to 8 form. 9 THE WITNESS: They each 10 worked for their own specific Rite 11 Aid distribution center. And they 12 all had different entities. So I 13 don't know each particular 14 entity's name. 15 BY MR. SIMMER: 16 Q. Were all of the distribution 17 centers subject to the same policies and 18 procedures? 19 A. Yes. 20 Q. So all the distribution 21 centers would have the same policies and 22 procedures about regulatory compliance, 23 correct? 24 A. Yes, sir.</p>	<p style="text-align: right;">Page 93</p> <p>1 Aid-specific and not Brooks Eckerd 2 specific. 3 Q. What about this e-mail tells 4 you that it fell into that transition 5 period from Brooks Eckerd to Rite Aid? 6 A. I'm just looking at the date 7 and why I would have asked that question. 8 Q. So is there a specific time 9 period when this transition -- transition 10 was happening where they were not part of 11 the Rite Aid corporate policies and 12 procedures? 13 MS. McENROE: Objection to 14 form. 15 THE WITNESS: There was a 16 time, yes, sir. 17 BY MR. SIMMER: 18 Q. When was that? 19 A. Approximately 2007, 2008. 20 Q. So at that point in time 21 there would have been different policies 22 and procedures for these legacy 23 distribution centers that Rite Aid 24 purchased in that Brooks Eckerd</p>

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1 transaction?
2 A. Until the --
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: Sorry.
6 Until the transaction was
7 final, that would be true.
8 BY MR. SIMMER:
9 Q. When was the transaction
10 final?
11 A. I -- I do not recall.
12 Q. So after the transaction was
13 final, would it have been true that there
14 were different procedures for the
15 Perryman distribution center as opposed
16 to the Liverpool distribution center?
17 MS. McENROE: Objection to
18 form.
19 THE WITNESS: There were
20 corporate policies. There was a
21 blue book binder which was a set
22 of guidelines, regulatory
23 guidelines. And then each
24 distribution center had their own

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1 policies and procedures. But they
2 were all -- they were all
3 basically the same, if you will.
4 BY MR. SIMMER:
5 Q. So this blue book binder
6 what's its official title?
7 A. I don't recall the name of
8 the binder itself.
9 Q. But it was a blue cover of
10 some kind?
11 A. Yes, sir. It was a thick
12 blue binder that every distribution
13 center had.
14 Q. And it was the same blue
15 book binder for every one of these
16 distribution centers?
17 A. Yes, sir.
18 Q. Even though they were
19 separate corporate entities, they all
20 worked off the same blue book?
21 A. Yes, sir.
22 Q. Who prepared the items that
23 went into that blue book?
24 A. It was prepared when I

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1 started. So I don't recall.
2 Q. Did you update that blue
3 book from time to time yourself?
4 A. I did not, no.
5 Q. Who had responsibility for
6 updating that blue book?
7 MS. McENROE: Objection to
8 form.
9 THE WITNESS: I don't
10 recall.
11 BY MR. SIMMER:
12 Q. What kinds of materials were
13 included in that blue book?
14 A. Guidelines. So for
15 inventory control, for transportation,
16 for controlled substances, et cetera,
17 really every facet of the distribution
18 operation.
19 Q. Did you consult that blue
20 book yourself from time to time?
21 A. Yes, sir.
22 Q. And were there changes to
23 the blue book from time to time?
24 A. I don't recall.

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1 Q. Can you look at the first
2 paragraph of your e-mail where you say,
3 "First of all, I want to ensure that you
4 have in place an excessive order
5 monitoring process for your respective
6 DC."
7 Do you see where you say
8 that?
9 A. Yes, sir.
10 Q. So what is it you're trying
11 to say here, if you recall?
12 A. I am trying to check and
13 ensure there's an excessive order
14 monitoring process for each of the
15 pharmacy DCs.
16 Q. Is that because of the fact
17 that you had some legacy Brooks Eckerd
18 distribution centers that you were --
19 that might not have had an excessive
20 order monitoring process in place?
21 MS. McENROE: Objection to
22 form.
23 THE WITNESS: I was -- I
24 wouldn't have known if they had

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1 one. But that's why I was
2 checking, just to ensure.
3 BY MR. SIMMER:
4 Q. At this point in time, all
5 the legacy Rite Aid distribution centers,
6 would it be correct that they all had an
7 excessive order monitoring process in
8 place?
9 A. Absolutely, yes, sir.
10 Q. And that would have been
11 something that would have been described
12 in the blue book that you just testified
13 about a moment ago?
14 MS. McENROE: Objection to
15 form.
16 THE WITNESS: I believe it
17 was in the blue book, yes, sir.
18 BY MR. SIMMER:
19 Q. "You go on to say, the
20 quantity should be as follows: Bottles
21 of 100 tablets or liquid containers,
22 maximum of 50 units per order. Bottles
23 of 500 tablets, maximum of ten per order.
24 Bottles of 1,000 tablets, maximum of five

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1 per order."
2 Do you see what I see?
3 A. Yes.
4 Q. Did I read that correctly?
5 A. Yes, sir.
6 Q. Who established this
7 standard?
8 A. Our government affairs
9 department.
10 Q. Do you know how they
11 determined that this would be the
12 standard?
13 A. I believe it was looking
14 back at the past [REDACTED] of history at
15 each specific store.
16 Q. And this was a standard that
17 was applied to all of the Rite Aid
18 stores, right?
19 A. Yes, sir.
20 Q. It was uniform for every
21 one?
22 A. Yes, sir.
23 Q. Right below that, do you see
24 where you say, "Please identify any and

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1 all stores that have attempted to order
2 in excess of these quantities. I need
3 the store number, item number and
4 description, and date of order. We are
5 going to run reports for those stores on
6 those items in question to check for
7 'need.'"
8 Do you see that?
9 A. Yes, sir.
10 Q. What are you asking for
11 there?
12 A. We had an excessive order
13 monitoring log that the DCs would use.
14 And they should be able to capture any
15 store that had ordered more than these
16 numbers that were listed in the paragraph
17 above.
18 If they had, I wanted those
19 numbers reported back to me so that I
20 could provide those to government
21 affairs, have them rerun those numbers
22 again to check to see if these quantities
23 were even needed at these stores.
24 So we could potentially

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1 adjust the monitoring program, or the
2 threshold limits that were in place.
3 Q. When you say "need" in that
4 paragraph, what is it that you mean by
5 that term?
6 A. For my vantage point, it
7 would be for -- for scripts, so for
8 script count.
9 Q. So based on how you're using
10 the term there, would it be fair to say
11 that there were Rite Aid pharmacies that
12 may have been ordering controlled
13 substances that they didn't in fact need?
14 MS. McENROE: Objection to
15 form.
16 THE WITNESS: There were
17 Rite Aid pharmacies that at times
18 would order what would be deemed
19 excessive. And through our
20 excessive order monitoring
21 program, the distribution centers
22 would in turn call those stores to
23 validate whether or not there was
24 a legitimate need or not.

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1 Oftentimes, more often than
2 not, the stores actually had a
3 keying error. So if they had
4 ordered 53, they really only
5 wanted five or they only wanted
6 three. And then that order would
7 get cut back at the distribution
8 center before being shipped. And
9 they kept a log annotating those
10 notes.
11 BY MR. SIMMER:
12 Q. The next paragraph you say,
13 "Also, some of you had stores that have
14 been given exceptions for certain items,
15 please provide the store number and item
16 numbers as well. We want to reevaluate
17 the need."
18 What are you saying there?
19 A. That there are large stores
20 that may have higher volume that may have
21 a true business need for higher than our
22 threshold limits, in which again Janet
23 Hart in our government affairs department
24 would run reports to justify whether or

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1 not those numbers were still, in fact,
2 accurate, whether they needed to be
3 increased or decreased. And we have done
4 both over my tenure. We have not just
5 increased the amount we ship, we've
6 actually decreased.
7 Q. When you say, "We want to
8 reevaluate the need," is that something
9 you were actually doing?
10 A. I was spearheading the
11 effort in relation to the DCs. I'm not
12 the one that actually did the background
13 work. But again, knowing the
14 responsibility of the DCs for excessive
15 order monitoring and suspicious order
16 monitoring, I want to make sure that
17 we're doing our due diligence to ensure
18 compliance.
19 Q. So when you're spearheading
20 the effort, you, in fact, were not doing
21 this evaluation yourself, correct?
22 A. That's correct.
23 Q. That's something government
24 relations was doing, right?

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1 A. Yes, sir.
2 Q. And that's Janet Hart's --
3 A. Yes, sir.
4 Q. -- function?
5 A. Yes, sir.
6 MS. McENROE: Just let him
7 finish his questions.
8 BY MR. SIMMER:
9 Q. I know you're real anxious
10 to answer these great questions, but you
11 have to let me finish.
12 So you, in fact, had nothing
13 to do with the actual evaluation; is that
14 right?
15 A. That's correct, sir.
16 Q. You also testified that --
17 however, that you wanted to make sure
18 that "we're doing our due diligence to
19 ensure compliance"; is that right?
20 A. Yes, sir.
21 Q. And what is it you, in fact,
22 were doing to ensure compliance?
23 A. That we had SOPs and
24 processes in place to identify anything

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1 that we deemed excessive or suspicious.
2 Q. The next paragraph of your
3 e-mail you say, "We will be re-evaluating
4 our current threshold. Once the run" --
5 strike that.
6 "Once we run the reports and
7 review, we will send to your DC printer
8 for you to file with your controlled drug
9 paperwork."
10 Do you see that?
11 A. Yes, sir.
12 Q. So what are you describing
13 here?
14 A. So again, the threshold is
15 listed above. So given that we have now
16 acquired additional distribution centers
17 and want to ensure full compliance
18 throughout our organization, we want to
19 rerun the reports for the information
20 that they would have in turn provided to
21 me, I would have provided to Janet, to
22 again check the true business need for
23 these specific items.
24 And then we would send the

<p style="text-align: right;">Page 106</p> <p>1 results of that to their DC printer, to 2 file with their controlled drug 3 paperwork. 4 So the -- the reasoning for 5 that is if DEA were to ever come in and 6 question why you shipped X number of 7 bottles to this specific store, we have 8 justification, we have a record to 9 explain why we do what we do. 10 Q. So it sounds like two things 11 happened. The first thing with the 12 results of what you were asking for was 13 information that you provided to 14 government relations, correct? 15 A. Yes, sir. 16 Q. And do you know what 17 government relations then did with the 18 information you provided in 2008 that 19 we're talking about here? 20 A. They would have sent 21 whatever information was found to the DCs 22 with guidance as to whether or not the 23 threshold was adjusted or not. And what 24 stores would be on that exception list.</p>	<p style="text-align: right;">Page 108</p> <p>1 BY MR. SIMMER: 2 Q. You just don't know, right? 3 A. I just don't know. 4 Q. Okay. The second thing that 5 you describe here is that the 6 distribution centers were to take this 7 paperwork and put it into their records 8 so that if the DEA ever came and did an 9 audit, they would have information in 10 their records to reflect what had 11 happened about the shipments beyond the 12 threshold; is that fair? 13 A. Yes, sir. 14 Q. And where in their records 15 would the distribution centers store 16 these reports? 17 A. I don't recall where they 18 stored them. 19 Q. Was this a one-time only 20 event that's going on here? 21 A. No, sir. We -- during my 22 tenure we reviewed the threshold several 23 times. 24 Q. So when you say you reviewed</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Okay. I want to clarify 2 your answer. You -- you said they would 3 have sent. Did they, in fact, do that, 4 do you know that? 5 A. I don't recall. 6 Q. So you're just speculating? 7 MS. McENROE: Objection to 8 form. 9 THE WITNESS: It's -- it's 10 been 11 years. I just don't 11 recall. 12 BY MR. SIMMER: 13 Q. But sitting here today, you 14 can't testify whether, in fact, 15 government relations ever did anything 16 with this information; is that fair? 17 MS. McENROE: Objection to 18 form. 19 THE WITNESS: Based on my 20 experience, I would -- I would say 21 they did. But however I can't be 22 100 percent sure because it's been 23 11 years ago. I just don't 24 remember.</p>	<p style="text-align: right;">Page 109</p> <p>1 it, you just pulled a record to show 2 which shipments were over the threshold, 3 right? 4 MS. McENROE: Objection to 5 form. 6 THE WITNESS: Early on there 7 was a threshold in place when I 8 first started. And I know that 9 we, in time, over time, continued 10 to reevaluate that. Again, just 11 to check for the validity and the 12 true business need. 13 BY MR. SIMMER: 14 Q. So when you say threshold, 15 is that what's described in the second 16 paragraph of this e-mail you're sending? 17 A. Yes, sir. 18 Q. Did that -- do those 19 threshold numbers change while you worked 20 at Rite Aid? 21 A. I believe they did, yes, 22 sir. 23 Q. And how did they change over 24 time?</p>

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<p>1 A. That I do not recall. I 2 don't recall whether they went up or 3 down. But I do know they were different 4 during my tenure. 5 Q. And whose responsibility was 6 it to make these changes to the threshold 7 numbers we're looking at here? 8 A. Worked collectively with 9 government affairs. 10 MS. McENROE: Scott -- 11 BY MR. SIMMER: 12 Q. So you had a responsibility 13 for that as well as government affairs, 14 right? 15 A. I had a responsibility to 16 communicate it to the distribution 17 centers. Government affairs made the 18 determination this is the threshold. 19 Q. And what's your 20 understanding how it is that the 21 government affairs came up with any 22 changes they made to these numbers? 23 MS. McENROE: Objection to 24 form.</p>	<p>1 get a good chance to take a quick 2 comfort break, that would be 3 appreciated on this side. 4 MR. SIMMER: Can we just go 5 a little bit further? 6 MS. McENROE: Yeah. Finish 7 your line of questioning, that 8 would be fine. 9 BY MR. SIMMER: 10 Q. Do you know whether there 11 were pharmacies that were identified as 12 part of this process that were ordering 13 controlled substances that they didn't 14 actually need? 15 MS. McENROE: Objection to 16 form. 17 THE WITNESS: I do not 18 recall. 19 BY MR. SIMMER: 20 Q. Who would we need to speak 21 to to find out the answer to that 22 question? 23 A. I would -- I would recommend 24 Janet Hart, sir.</p>
Page 111	Page 113
<p>1 THE WITNESS: By rerunning 2 reports based on average sales, 3 average dispensing. 4 BY MR. SIMMER: 5 Q. So the numbers basically 6 just were to reflect the averages across 7 all Rite Aid pharmacies; is that correct? 8 MS. McENROE: Objection to 9 form. 10 THE WITNESS: That I can't 11 answer. 12 BY MR. SIMMER: 13 Q. Okay. I'm just trying to 14 understand how it is that -- that 15 government affairs established what the 16 thresholds would be. 17 MS. McENROE: Is that a 18 question? 19 BY MR. SIMMER: 20 Q. Do you know? 21 A. I -- with all due respect, 22 that would be a question best asked for 23 them. I don't recall. 24 MS. McENROE: Scott, if we</p>	<p>1 Q. Because ultimately it was 2 their responsibility to determine which 3 pharmacies were making orders they didn't 4 actually need; is that right? 5 MS. McENROE: Objection -- 6 objection to form. 7 THE WITNESS: To identify? 8 BY MR. SIMMER: 9 Q. Pharmacies that were 10 ordering controlled substances they 11 didn't actually need? 12 MS. McENROE: Objection to 13 form. 14 THE WITNESS: They -- yes. 15 BY MR. SIMMER: 16 Q. So if it were true that a 17 pharmacy was ordering controlled 18 substances they didn't actually need, 19 that's something that Rite Aid should 20 have been reporting to the DEA; isn't 21 that fair? 22 MS. McENROE: Objection to 23 form. 24 THE WITNESS: I really don't</p>

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1 know.
2 BY MR. SIMMER:
3 Q. Is it correct that as
4 director of supply chain regulatory
5 compliance, it would have been your
6 responsibility to ensure that the company
7 had implemented a suspicious order
8 monitoring system to ensure that only
9 orders sent to pharmacies where there had
10 been a legitimate need?
11 MS. McENROE: Objection to
12 form.
13 THE WITNESS: Yes.
14 BY MR. SIMMER:
15 Q. If you had been aware that
16 there were orders sent to Rite Aid
17 pharmacies where there was no legitimate
18 need, this is something you would flag as
19 being suspicious, right?
20 MS. McENROE: Objection to
21 form.
22 THE WITNESS: If I were made
23 aware of it, yes, sir.
24 BY MR. SIMMER:

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1 Q. And how would you, in fact,
2 flag that as being a suspicious order?
3 A. Again, I didn't have
4 visibility over orders, so I wouldn't
5 have known unless someone had -- would
6 have called me and told me.
7 Q. And the folks that had that
8 responsibility, and that information,
9 that's government relations, right?
10 A. It would have been the
11 pharmacy DCs would have identified
12 anything suspicious, in turn would have
13 called government affairs, correct.
14 Q. And again I think you -- you
15 testified about that -- this a moment
16 ago, Rite Aid would have notified the DEA
17 of any suspicious orders, right?
18 MS. McENROE: Objection to
19 form.
20 THE WITNESS: Yes.
21 BY MR. SIMMER:
22 Q. And Rite Aid would not have
23 shipped any orders that were deemed to be
24 suspicious, right?

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1 MS. McENROE: Objection to
2 form.
3 THE WITNESS: Yes.
4 MR. SIMMER: We can go off
5 the record.
6 THE VIDEOGRAPHER: The time
7 is now 11:25 a.m. We're going off
8 the record.
9 (Short break.)
10 THE VIDEOGRAPHER: The time
11 is now 11:42 a.m. We are back on
12 the record.
13 (Document marked for
14 identification as Exhibit Rite Aid
15 Mitchell-3.)
16 BY MR. SIMMER:
17 Q. Sir, we're going to -- I
18 hand you what we marked as Mitchell
19 Exhibit 3. I'll identify it for the
20 record as a press release issued by the
21 Department of Justice on January 12th,
22 2009. It is a two-page document. We
23 printed the exhibit front and back. So
24 just take a moment to look at that.

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1 A. Okay.
2 Q. Do you see where the
3 headline to this press release, it says,
4 "Rite Aid Corporation and subsidiaries
5 agree to pay \$5 million in civil
6 penalties to resolve violations in eight
7 states of the Controlled Substances Act"?
8 A. Yes, sir.
9 Q. And this would have occurred
10 during the time that you were working for
11 the company; is that correct?
12 A. Yes, sir.
13 Q. Do you recall this
14 settlement?
15 A. I do not.
16 Q. Do you recall whether this
17 settlement had any impact on your work as
18 the director of supply chain regulatory
19 compliance?
20 MS. McENROE: Objection to
21 form.
22 THE WITNESS: No, sir.
23 After reading this, it's pretty
24 clear it was 100 percent related

<p style="text-align: right;">Page 118</p> <p>1 to the Rite Aid stores.</p> <p>2 BY MR. SIMMER:</p> <p>3 Q. Okay. Look at the first</p> <p>4 bullet in the middle of the page, on Page</p> <p>5 1. Do you see where it says, "At</p> <p>6 pharmacies in Kentucky and New York, Rite</p> <p>7 Aid knowingly filled prescriptions for</p> <p>8 controlled substances that were not</p> <p>9 issued for a legitimate medical purpose</p> <p>10 pursuant to a valid physician-patient</p> <p>11 relationship"?</p> <p>12 A. Yes, sir.</p> <p>13 Q. So would you agree with me</p> <p>14 that when it says that it had no</p> <p>15 legitimate medical purpose, those are</p> <p>16 prescriptions for which there was no</p> <p>17 legitimate need?</p> <p>18 MS. McENROE: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: No. I</p> <p>21 wouldn't necessarily say that.</p> <p>22 BY MR. SIMMER:</p> <p>23 Q. And why wouldn't you?</p> <p>24 A. They may be needed for</p>	<p style="text-align: right;">Page 120</p> <p>1 form.</p> <p>2 THE WITNESS: Yes. Yes, it</p> <p>3 would be.</p> <p>4 BY MR. SIMMER:</p> <p>5 Q. And the orders that the</p> <p>6 pharmacy makes of controlled substances,</p> <p>7 those would be to fill prescriptions,</p> <p>8 right?</p> <p>9 A. That would be correct.</p> <p>10 Q. And with regard to these</p> <p>11 specific pharmacies, when they say there</p> <p>12 was no legitimate medical purpose, that's</p> <p>13 coming out of their inventory of the</p> <p>14 shipments they had gotten from the</p> <p>15 Perryman facility, right?</p> <p>16 MS. McENROE: Objection to</p> <p>17 form.</p> <p>18 THE WITNESS: Yeah, it could</p> <p>19 be, certainly, or it could have</p> <p>20 come from McKesson.</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. In either event, those</p> <p>23 shipments were sent to a Rite Aid</p> <p>24 pharmacy, right?</p>
<p style="text-align: right;">Page 119</p> <p>1 another patient, but maybe not in the</p> <p>2 example that they're giving.</p> <p>3 Q. But with regard to those</p> <p>4 specific prescriptions, when it says here</p> <p>5 that there was no legitimate medical</p> <p>6 purpose, wouldn't it be true that there</p> <p>7 was no need to even have those</p> <p>8 prescriptions issued in the first place?</p> <p>9 MS. McENROE: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: No. Again, I</p> <p>12 would disagree.</p> <p>13 BY MR. SIMMER:</p> <p>14 Q. And again, what is your</p> <p>15 disagreement with that?</p> <p>16 A. I don't know how dispensing</p> <p>17 a script has anything to do with on-hand</p> <p>18 inventory at store level.</p> <p>19 Q. Nothing at all?</p> <p>20 A. Right.</p> <p>21 Q. So when a pharmacy actually</p> <p>22 has inventory, isn't that inventory being</p> <p>23 used to fill prescriptions?</p> <p>24 MS. McENROE: Objection to</p>	<p style="text-align: right;">Page 121</p> <p>1 MS. McENROE: Objection to</p> <p>2 form.</p> <p>3 THE WITNESS: Correct.</p> <p>4 BY MR. SIMMER:</p> <p>5 Q. And you're disputing the</p> <p>6 fact that when it says no legitimate</p> <p>7 medical purpose, whether that is coming</p> <p>8 out of the inventory for which there is</p> <p>9 no legitimate need as well, right?</p> <p>10 MS. McENROE: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: I wouldn't</p> <p>13 have any insight as to what</p> <p>14 inventory -- what inventory</p> <p>15 balances a store would be required</p> <p>16 to have. So I guess the point</p> <p>17 that I was trying to make is that</p> <p>18 I don't think it's out of the</p> <p>19 ordinary for a store to have, for</p> <p>20 example, ten bottles of a</p> <p>21 particular drug if there are going</p> <p>22 to be scripts sold for that drug.</p> <p>23 I would have absolutely no</p> <p>24 way of knowing the</p>

<p style="text-align: right;">Page 122</p> <p>1 doctor-physician-pharmacy-patient 2 relationship. I mean, what 3 happens at the store level, I have 4 no knowledge or observation of. 5 BY MR. SIMMER: 6 Q. So when a store, and in this 7 example these stores in Kentucky and New 8 York, issued prescriptions for which 9 there was no legitimate medical purpose, 10 would you agree with me that they would 11 need to replenish their stock with 12 additional controlled substances? 13 MS. McENROE: Objection to 14 form. 15 THE WITNESS: Replenishment 16 is based on sales, so yes. 17 BY MR. SIMMER: 18 Q. And so in that instance, if 19 those sales were reflective of 20 prescriptions for which there was no 21 legitimate medical purpose, correct? 22 MS. McENROE: Objection to 23 form. 24 THE WITNESS: That's --</p>	<p style="text-align: right;">Page 124</p> <p>1 Can you tell us what changes 2 the company made to its suspicious order 3 monitoring system to ensure that orders 4 were being shipped based on legitimate 5 medical purpose? 6 MS. McENROE: Objection to 7 form, including asked and 8 answered. 9 THE WITNESS: I am not aware 10 of any changes. 11 (Document marked for 12 identification as Exhibit Rite Aid 13 Mitchell-4.) 14 BY MR. SIMMER: 15 Q. I'll hand you what we've 16 marked as Mitchell Exhibit Number 4. 17 I'll identify it for the 18 record. It is a settlement agreement and 19 release. We've obtained this off -- it's 20 a public document. We obtained it off 21 the internet. 22 If you'd like to review the 23 entire document, that's fine. But I'm 24 just going to ask you a few general</p>
<p style="text-align: right;">Page 123</p> <p>1 that's what it says. Again, I 2 have no knowledge of that 3 whatsoever. 4 BY MR. SIMMER: 5 Q. Following the \$5 million in 6 fines that Rite Aid paid here, can you 7 tell us what changes the company made to 8 its suspicious order monitoring system to 9 ensure that orders were being shipped 10 based on legitimate medical purpose? 11 MS. McENROE: Objection to 12 form. 13 THE WITNESS: Again, this 14 is -- this entire document is 15 relating to the stores. Never 16 once does it talk about a 17 distribution center. And I am 18 confident that the programs we had 19 in place, based on DEA audits, 20 specifically Perryman in 2005 and 21 in 2009, we had glowing results. 22 BY MR. SIMMER: 23 Q. That wasn't what my question 24 was.</p>	<p style="text-align: right;">Page 125</p> <p>1 questions about it. 2 A. Okay. 3 Q. Do you recall ever having 4 seen this document before? 5 A. No, sir. 6 Q. Is it fair to say that this 7 settlement agreement and release, so far 8 as you know, did not result in any 9 changes in how you conducted your work as 10 director of supply chain regulatory 11 compliance at Rite Aid? 12 MS. McENROE: Objection to 13 form. 14 THE WITNESS: That is 15 correct. 16 BY MR. SIMMER: 17 Q. Okay. I'll direct your 18 attention to one specific paragraph, 19 Paragraph 10 on Page 11. 20 Do you see where it says, 21 "Rite Aid represents that it has taken 22 good faith actions to detect and prevent 23 diversion, including without limitation, 24 agreeing to implement the policies and</p>

<p style="text-align: right;">Page 126</p> <p>1 procedures that are the subject of a 2 memorandum of agreement between Rite Aid 3 and the Drug Enforcement Administration, 4 dated January 12, 2009, and attached 5 hereto as Appendix B." 6 Do you see that? 7 A. Yes. 8 Q. Did you undertake any 9 changes in your work as Rite Aid's 10 director of supply chain regulatory 11 compliance as part of these good faith 12 actions that the company agreed to 13 undertake? 14 MS. McENROE: Objection to 15 form. 16 THE WITNESS: Is there a 17 copy of the MOU that they are 18 referring, or memorandum of 19 agreement? 20 BY MR. SIMMER: 21 Q. Well, we'll get to that in a 22 moment. I just recall -- I'm asking 23 whether you -- whether you recall 24 undertaking any good faith actions at all</p>	<p style="text-align: right;">Page 128</p> <p>1 pages. 2 I think it's the memorandum 3 of agreement that was being discussed in 4 the prior exhibit. Take a moment to look 5 at that. 6 By all means, look at the 7 entire document if you need to. But I 8 just have a few specific questions 9 relatively straightforward. 10 Just the first paragraph. I 11 can point to you a couple passages, and 12 if you need to look at the rest of the 13 document, do so. 14 First paragraph, do you see 15 that it says, "This is administrative 16 memorandum of agreement entered into on 17 this 12th day of January, 2009, by and 18 between the United States Department of 19 Justice, Drug Enforcement Administration, 20 hereinafter DEA, and Rite Aid 21 Corporation"? 22 Do you see that? 23 A. Yes, sir. 24 Q. And that Rite Aid</p>
<p style="text-align: right;">Page 127</p> <p>1 as a result of this settlement? 2 MS. McENROE: Objection to 3 form. 4 THE WITNESS: I do not 5 recall. 6 (Document marked for 7 identification as Exhibit Rite Aid 8 Mitchell-5.) 9 BY MR. SIMMER: 10 Q. Just to be clear for the 11 record. Do you recall any discussions at 12 all about this \$5 million settlement 13 while you were working with Rite Aid? 14 MS. McENROE: Objection to 15 form. 16 THE WITNESS: I do not 17 recall. 18 BY MR. SIMMER: 19 Q. I'll hand you what we've 20 marked as Mitchell Exhibit Number 5. 21 I'll identify it for the 22 record as a document entitled memorandum 23 of agreement. And again, it's a document 24 we obtained from the internet. Multi</p>	<p style="text-align: right;">Page 129</p> <p>1 Corporation, that's the entity that you 2 work for, correct? 3 MS. McENROE: Objection to 4 form. 5 THE WITNESS: Yes, sir. 6 BY MR. SIMMER: 7 Q. You see at the end of that 8 paragraph it says, "A list of Rite Aid 9 subsidiaries is attached hereto as 10 Exhibit A"? 11 I'm sorry, Appendix A? 12 A. Yes, sir. 13 Q. Can I direct you to 14 Appendix A at the back, it's Page 9. 15 And this is a list of all 16 the Rite Aid subsidiaries, correct? 17 A. Yes, sir. 18 Q. And they were a party to -- 19 as far as the way this is referencing, 20 they were a party to the settlement as 21 well, correct? 22 A. Apparently so, yes, sir. 23 Q. And in the case of the 24 Perryman facility, is that what's</p>

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1 indicated, Rite Aid of Maryland Inc.?
2 MS. McENROE: Objection to
3 form.
4 THE WITNESS: Yes, sir.
5 BY MR. SIMMER:
6 Q. Can I take you back to
7 Page 3 of this exhibit. At the last
8 sentence of the first paragraph on that
9 page, do you see where it says, "Rite Aid
10 acknowledges and agrees that the
11 obligations undertaken in this
12 subparagraph do not fulfill the totality
13 of its obligations under the CSA"?
14 A. Yes, sir.
15 Q. So you agree with me that --
16 that the compliance that the company had
17 entered into wasn't all its obligations
18 were under the Controlled Substances Act,
19 right?
20 A. Yes, sir.
21 Q. And in the next paragraph,
22 you see where it says, "Rite Aid shall
23 monitor compliance at all Rite Aid
24 locations in properly maintaining records

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1 in accordance with the CSA. Within one
2 year of the effective date of this
3 agreement, Rite Aid loss prevention
4 managers will conduct a separate audit of
5 all Rite Aid pharmacies for compliance in
6 all material respects with all applicable
7 DEA regulatory requirements, including
8 regulatory" -- or "including
9 recordkeeping, reporting and security."
10 Do you see that?
11 A. Yes, sir.
12 Q. Did you have any role and
13 responsibility with regard to those
14 audits of the -- of the Rite Aid
15 pharmacies?
16 A. No, sir.
17 Q. Were you aware that -- that
18 as part of this settlement, there were
19 allegations that there were prescriptions
20 issued for which there was no legitimate
21 medical need?
22 MS. McENROE: Objection to
23 form. Asked and answered.
24 THE WITNESS: No, sir.

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1 BY MR. SIMMER:
2 Q. Had you known that, would it
3 have -- have prompted you to make any
4 changes to Rite Aid's suspicious order
5 monitoring program?
6 MS. McENROE: Objection to
7 form. Calls for speculation.
8 THE WITNESS: I don't think
9 so.
10 BY MR. SIMMER:
11 Q. Because in your -- your
12 view, what happened at the pharmacies was
13 irrelevant to what was happening at the
14 distribution center level?
15 MS. McENROE: Objection to
16 form.
17 THE WITNESS: I felt
18 comfortable that the distribution
19 centers had good policies and
20 procedures and measures already in
21 place to prevent the DCs from --
22 from shipping to stores.
23 BY MR. SIMMER:
24 Q. So as far as you know, were

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1 the distribution centers -- centers
2 actually monitoring whether there was
3 legitimate medical need for the
4 prescriptions that they were filling?
5 MS. McENROE: Objection to
6 form.
7 THE WITNESS: The
8 distribution center would have
9 absolutely no idea about a
10 legitimate medical need.
11 They would be able to look
12 at -- you know, first of all our
13 distribution centers, they
14 distributed Schedules III through
15 V. So Schedule IIs were not
16 distributed at the DC.
17 And again, there was a
18 monitoring program in place to
19 look for anything out of the norm;
20 excessive, suspicious, et cetera.
21 BY MR. SIMMER:
22 Q. But the fact that in this
23 settlement agreement, the -- the company
24 admitted that there were prescriptions

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1 that were filled at pharmacies where
 2 there was no legitimate medical need,
 3 that had no bearing on what you were
 4 doing in your job; is that right?
 5 MS. McENROE: Objection to
 6 form.
 7 THE WITNESS: That would be
 8 correct. This is 100 percent
 9 related to deficiencies at the
 10 pharmacies. It's not the pharmacy
 11 distribution centers.
 12 BY MR. SIMMER:
 13 Q. So -- so when a --
 14 MS. McENROE: Hold on. Did
 15 you have something more to say?
 16 BY MR. SIMMER:
 17 Q. Yeah, were you --
 18 A. Again, I was just going to
 19 kind of go back to, we had had -- we have
 20 had multiple DEA audits, where again DEA
 21 has come in, they -- they've looked at
 22 the entire gamut of the operation. They
 23 have continually praised the distribution
 24 center on its compliance programs, on the

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1 effectiveness on the programs.
 2 And again, with DEA being
 3 kind of my scorecard as to how I rate my
 4 ability to help the DCs become compliant,
 5 if the DC -- if the DEA is telling me
 6 that your program is awesome, then I have
 7 no -- no really valid business reason to
 8 want to change that.
 9 BY MR. SIMMER:
 10 Q. Point well taken.
 11 So what you're testifying,
 12 as I understand it, the fact that the
 13 company had admitted in this settlement
 14 agreement that there were prescriptions
 15 filled where there was no legitimate
 16 medical need was irrelevant to what
 17 the -- the company was doing in
 18 suspicious order monitoring, correct?
 19 MS. McENROE: Objection to
 20 form.
 21 THE WITNESS: I'm saying I
 22 had no oversight or knowledge of
 23 it.
 24 BY MR. SIMMER:

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1 Q. And I'm trying to
 2 understand. As you -- in your
 3 responsibilities as the director of
 4 supply chain regulatory compliance at
 5 this time, what you're -- you're
 6 testifying that the fact that there were
 7 prescriptions filled where there was no
 8 legitimate medical need, you felt that
 9 they had nothing to do with the company's
 10 obligation to have a suspicious order
 11 monitoring program that was in operation
 12 at the time, right?
 13 MS. McENROE: Objection to
 14 form.
 15 THE WITNESS: No, that's not
 16 what I said.
 17 I said that my
 18 responsibility was oversight over
 19 the distribution centers.
 20 I was not aware of any of
 21 this when it happened. Therefore,
 22 if I'm not aware of it, I
 23 wouldn't, or couldn't have made
 24 changes to the program at the DCs.

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1 BY MR. SIMMER:
 2 Q. Do you have an understanding
 3 of who in the company would have had an
 4 obligation to tell you about this
 5 settlement agreement and how it might
 6 impact what the company was doing about
 7 its suspicious order monitoring program?
 8 MS. McENROE: Objection to
 9 form.
 10 THE WITNESS: I could assume
 11 that multiple people could have,
 12 or should have notified the supply
 13 chain department.
 14 BY MR. SIMMER:
 15 Q. And who were those
 16 individuals you believe that could have
 17 or should have notified the supply chain
 18 department?
 19 A. Whoever was involved in
 20 making the settlement. So I'm -- I would
 21 assume the Rite Aid legal team, or
 22 government affairs or pharmacy
 23 operations.
 24 Q. And your best recollection

<p style="text-align: right;">Page 138</p> <p>1 is none of those individuals, none of 2 those departments, ever notified you of 3 any changes that should be made to Rite 4 Aid's suspicious order monitoring 5 program, right? 6 MS. McENROE: Objection to 7 form. 8 THE WITNESS: I am not 9 aware, no. 10 (Document marked for 11 identification as Exhibit Rite Aid 12 Mitchell-6.) 13 BY MR. SIMMER: 14 Q. I'll hand you what we've 15 marked as Mitchell Exhibit Number 6. 16 Take a moment to review 17 that. While you're doing that let me 18 identify it for the record as an e-mail 19 chain. First Bates number is 20 Rite_Aid_OMDL_0027317 through -- 21 MS. McENROE: 316, I think. 22 MR. SIMMER: What did I say? 23 Oh, I'm sorry, 316, thank you 24 through 0027323.</p>	<p style="text-align: right;">Page 140</p> <p>1 hydrocodone. 2 BY MR. SIMMER: 3 Q. And am I right that it is 4 Store 2389? 5 A. Yes, sir. 6 Q. Do you know where that store 7 is located? 8 A. I do not. 9 Q. We looked it up. I think -- 10 and see if you agree on it. Canton, 11 Ohio? 12 A. I have no idea. 13 Q. Okay. Can I direct your 14 attention to the e-mail that begins at 15 the bottom of Page 7317. It's from Pam 16 Mueller to Charles Miller copying a group 17 of individuals including yourself. 18 Do you see that? 19 A. Yes, sir. 20 Q. Let me just read some of 21 that e-mail and ask you a few questions 22 about it. 23 In the body of the e-mail, 24 Ms. Mueller, on July 23, 2008, says,</p>
<p style="text-align: right;">Page 139</p> <p>1 BY MR. SIMMER: 2 Q. It's a multi-page exhibit. 3 I can direct your attention to specific 4 pages I'm going to ask you questions 5 about. 6 A. Okay. 7 Q. I'd like to have -- direct 8 your attention to two pages in this 9 Exhibit, 317 and 318, if I could. 10 A. Okay. 11 Q. Do you recall having seen 12 this document before? 13 A. I have, yes, sir. 14 Q. When is the last time that 15 you saw this document? 16 A. Yesterday. 17 Q. What's your understanding is 18 going on here that you've become involved 19 in this communication? 20 MS. McENROE: Objection to 21 form. 22 THE WITNESS: It appears 23 that a store is looking to 24 increase their threshold on</p>	<p style="text-align: right;">Page 141</p> <p>1 "Charlie, conclusion of our conversation 2 with Jack Phillipson and Charlotte 3 Winder. Jack is going to send a request 4 to have Store Number 2389 minimum 5 increased on this item to Janet Hart and 6 Kevin Mitchell." 7 Do you see that? 8 A. Yes, sir. 9 Q. And that would be you, 10 right? 11 A. Yes, sir. 12 Q. And Ms. Hart, right? 13 A. Yes, sir. 14 Q. "Charlotte Winder is sending 15 an e-mail to Pam Hammaker to approve the 16 last credit from 7/29" -- that's 17 July 29th -- "and all other credits have 18 been issued." 19 Do you see that? 20 A. Yes, sir. 21 Q. Do you know what she's 22 saying there? 23 A. I have no idea. 24 Q. She goes on to say, "The</p>

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1 process for quantity limits on controls
2 is: 500 tablets, limit to ten bottles;
3 1,000 tablets, limit to five bottles."
4 Do you see that?
5 A. Yes, sir.
6 Q. And that's the threshold
7 that we were talking about earlier,
8 correct?
9 A. Yes, sir.
10 Q. And then she has a question
11 for you. That's what I want to ask you
12 about. And I think that's you in the
13 middle of this page here, or middle of
14 this e-mail?
15 A. Yes, sir.
16 Q. "Kevin, do you know if there
17 is documentation on this somewhere that
18 the stores would have received so that
19 they are aware of the limitations and
20 know how to get resolved? This store
21 does not seem to be aware of these
22 limitations."
23 Now, what's the answer to
24 that? Is there documentation that the

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1 stores had about this threshold?
2 A. Absolutely not.
3 Q. And why not?
4 A. Quite frankly, I wouldn't
5 want the stores to know about a
6 threshold. That's our job as the
7 registrant to monitor.
8 Q. Okay. And if in fact they
9 knew what the thresholds were, how would
10 that change things?
11 MS. McENROE: Objection to
12 form.
13 THE WITNESS: It wouldn't in
14 my mind, because, again, we would
15 have to do the due diligence with
16 Janet running reports to validate
17 that our thresholds were
18 legitimate.
19 BY MR. SIMMER:
20 Q. She goes on to say in this
21 next paragraph, "If the stores need these
22 limits lifted for any reason, they are to
23 have someone send an e-mail to Janet Hart
24 slash Kevin Mitchell with an

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1 explanation."
2 Do you see that?
3 A. Yes, sir.
4 Q. Is that an accurate
5 description of the process in terms of if
6 they -- if the order was over the
7 threshold, they were to get in touch with
8 you and Ms. Hart?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: Typically what
12 would happen if a store was
13 ordering a certain number of units
14 and they weren't getting them,
15 they would typically make some
16 sort of noise, whether it was
17 calling pharmacy replenishment or
18 Janet to find out what could be
19 done to increase their limits.
20 What happened in those
21 conversations, I honestly could
22 not tell you. But if for any
23 reason -- according to this last
24 line, if a store needs limits

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1 increased they would send an
2 e-mail to Janet. I was typically
3 copied on there, so that I would
4 know what the distribution centers
5 were allowed to do or not.
6 BY MR. SIMMER:
7 Q. So you were copied on it.
8 It's not that you were an actual
9 decisionmaker on that?
10 A. Correct. I was not driving
11 the change one way or the other.
12 Q. So when you say that the
13 pharmacies would make some sort of noise.
14 What is it that you mean by some sort of
15 noise?
16 A. Contacting either the
17 pharmacy replenishment team or Janet,
18 whoever they have a relationship with
19 that they would be able to get action.
20 Q. Well, Ms. Mueller actually
21 is part of replenishment, right?
22 A. That's correct.
23 Q. So when she describes this,
24 she's describing a different process than

<p style="text-align: right;">Page 146</p> <p>1 you just described, right?</p> <p>2 MS. McENROE: Objection to</p> <p>3 form.</p> <p>4 THE WITNESS: In that Pam</p> <p>5 has no -- she has no jurisdiction</p> <p>6 or no ability to increase</p> <p>7 thresholds.</p> <p>8 Her job is strictly to</p> <p>9 replenish the stores' inventory.</p> <p>10 BY MR. SIMMER:</p> <p>11 Q. So if a store needed more</p> <p>12 than it was allowed under the threshold</p> <p>13 and they contacted replenishment, she</p> <p>14 couldn't do anything about that, right?</p> <p>15 A. That's correct. She should</p> <p>16 not be able to do anything about that.</p> <p>17 Q. And that the only area that</p> <p>18 could make that -- or to approve that,</p> <p>19 would be Janet Hart's government</p> <p>20 relations department, right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And again, the term "need"</p> <p>23 is used in that sentence. That's the</p> <p>24 same thing that you had in that prior</p>	<p style="text-align: right;">Page 148</p> <p>1 in order to get this increase?</p> <p>2 A. I do not. Janet would have</p> <p>3 to -- again, she would have to run</p> <p>4 reports to validate historical sales</p> <p>5 and -- you know, again, if there was</p> <p>6 other information or other detail that</p> <p>7 had to be provided, that would come from</p> <p>8 Janet.</p> <p>9 Q. Do you have an understanding</p> <p>10 what type of explanations would have been</p> <p>11 the kinds that would have been used to</p> <p>12 justify an increase?</p> <p>13 A. I do not.</p> <p>14 Q. You've never seen any kind</p> <p>15 of criteria or anything else that</p> <p>16 described, you know, what would be a</p> <p>17 valid explanation?</p> <p>18 MS. McENROE: Objection.</p> <p>19 THE WITNESS: I don't</p> <p>20 recall.</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. Were there -- did the</p> <p>23 company have any standard operating</p> <p>24 procedures in place about what would be a</p>
<p style="text-align: right;">Page 147</p> <p>1 e-mail that we looked at earlier. Is</p> <p>2 that a different usage of the term "need"</p> <p>3 than what you had in your e-mail? Is it</p> <p>4 the same understanding?</p> <p>5 MS. McENROE: Objection to</p> <p>6 form.</p> <p>7 BY MR. SIMMER:</p> <p>8 Q. I'll withdraw the question.</p> <p>9 It's not a good question. Let's do that</p> <p>10 again.</p> <p>11 When she says "need" here,</p> <p>12 do you have any reason to believe that</p> <p>13 that's different than how you used it in</p> <p>14 the earlier e-mail?</p> <p>15 MS. McENROE: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: I don't think</p> <p>18 it would be any different than how</p> <p>19 I used it.</p> <p>20 BY MR. SIMMER:</p> <p>21 Q. Okay. And when she says</p> <p>22 that they are to contact you and Janet</p> <p>23 Hart with an explanation, do you know</p> <p>24 what the explanation was supposed to be</p>	<p style="text-align: right;">Page 149</p> <p>1 valid explanation for a threshold</p> <p>2 increase?</p> <p>3 A. I don't recall.</p> <p>4 Q. Look at your e-mail, which</p> <p>5 is the next one in the string, again</p> <p>6 dated July 31, 2008.</p> <p>7 A few minutes later, the</p> <p>8 prior e-mail was at 9:24 a.m., and your</p> <p>9 e-mail is at 9:28 a.m.</p> <p>10 Do you see that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And let me read into the</p> <p>13 record what -- in the body of your</p> <p>14 e-mail.</p> <p>15 "There are limits on all</p> <p>16 controlled drugs. As I discussed with</p> <p>17 Jerry on Tuesday, if a store has a</p> <p>18 legitimate need and we can show where</p> <p>19 their dispensed usage supports their</p> <p>20 ordering, we can raise the limits."</p> <p>21 Let me just stop there.</p> <p>22 You say that, "As I</p> <p>23 discussed with Jerry." Do you who -- do</p> <p>24 you know who that is?</p>

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1 A. Jerry Paul. Yes, sir.
2 Q. And who is that?
3 A. He is the -- when I was
4 there he was the senior director of
5 replenishment.
6 Q. And where you say "if a
7 store has a legitimate need," tell us
8 what you meant by "legitimate need".
9 A. Sales to support the orders.
10 Q. So --
11 A. If -- sorry. So if their
12 inventory levels had gotten below a
13 certain point that, you know,
14 auto-replenishment would raise them back
15 to the levels that they're -- that they
16 should be at.
17 And as I understand that
18 program gets adjusted every [REDACTED]
19 [REDACTED] the auto-replenishment system.
20 Q. And how is it adjusted every
21 [REDACTED]
22 A. Based on sales.
23 Q. So when you're talking about
24 legitimate need, it's simply there are

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1 sales to justify getting more than the
2 threshold would allow, right?
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: That's
6 correct.
7 BY MR. SIMMER:
8 Q. And to be legitimate, simply
9 they had to have sales that would require
10 that they get additional controlled
11 substances beyond the threshold, right?
12 MS. McENROE: Objection to
13 form.
14 THE WITNESS: Above the
15 threshold, they would -- again,
16 Janet would have to determine that
17 there was a legitimate business
18 need for that to happen.
19 Otherwise, regardless of what's
20 ordered, that order is going to
21 get cut back.
22 BY MR. SIMMER:
23 Q. Did the standard operating
24 procedures discuss what a legitimate

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1 business need was?
2 A. I don't recall.
3 Q. Did you have any idea how
4 Janet would undertake a determination of
5 what a legitimate business need was?
6 A. I do not know.
7 Q. So how is a legitimate need
8 different than simply a need?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: There would
12 have to be a legitimate script
13 written by a doctor.
14 BY MR. SIMMER:
15 Q. So do you mean the -- the
16 term "need" to be different than
17 legitimate need?
18 A. In -- in my opinion, I think
19 legitimate is the right word because I
20 think we all know that there are some
21 doctors that don't necessarily write
22 scripts that are legitimate.
23 Q. Would there be instances
24 as -- as a store had an illegitimate

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1 need, for example?
2 A. I'm not aware of any.
3 Q. For example, if the
4 prescription was for not a medically
5 appropriate purpose, would that be an
6 illegitimate need driving that particular
7 threshold increase?
8 MS. McENROE: Objection to
9 form.
10 THE WITNESS: Not for me to
11 determine.
12 BY MR. SIMMER:
13 Q. But that is your language,
14 talking about legitimate need, right?
15 MS. McENROE: Objection to
16 form.
17 THE WITNESS: That's
18 correct. I meant something
19 different by it than it's being
20 interpreted.
21 BY MR. SIMMER:
22 Q. I'm just asking what you
23 meant by it. I -- it's your
24 interpretation I care about, right?

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1 A. Well -- valid sales.
2 That's --
3 Q. Okay.
4 A. That's it. Yes, sir.
5 Q. So my question is, was the
6 concern here that there could be
7 illegitimate prescriptions and that would
8 mean that they shouldn't get that
9 threshold increase?
10 MS. McENROE: Objection to
11 form.
12 THE WITNESS: I would have
13 no way of knowing if it was
14 illegitimate or legitimate, the
15 script.
16 BY MR. SIMMER:
17 Q. Am I right that the only way
18 to determine whether it was legitimate or
19 illegitimate was to actually get the
20 prescribing data?
21 MS. McENROE: Objection to
22 form.
23 THE WITNESS: I -- I really
24 don't have the knowledge to answer

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1 that.
2 BY MR. SIMMER:
3 Q. You go on to say that "we
4 can show where their dispensed usage
5 supports their ordering." What did you
6 mean by that?
7 A. So that their sales would
8 mirror or come close to mirroring their
9 ordering patterns.
10 Q. Simply looking for sales,
11 that would reflect their ordering
12 patterns, right?
13 A. Yes, sir.
14 Q. And so what's going on in
15 their sales, you have no way of knowing
16 whether those are -- are legitimate
17 prescriptions at all, would you?
18 MS. McENROE: Objection to
19 form.
20 THE WITNESS: That would be
21 correct.
22 BY MR. SIMMER:
23 Q. So if there were
24 illegitimate prescriptions for example,

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1 your system wouldn't have any way to
2 detect that; isn't that fair?
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: That -- I
6 would think that would be correct.
7 BY MR. SIMMER:
8 Q. So under your system, you're
9 simply looking at what the demand was,
10 right?
11 MS. McENROE: Objection to
12 form.
13 THE WITNESS: Yes, sir.
14 BY MR. SIMMER:
15 Q. So if they had -- they had
16 demand or business that would increase
17 the sales, then you would be -- the --
18 the system would allow them to have a
19 threshold increase, right?
20 MS. McENROE: Objection to
21 form.
22 THE WITNESS: Again, that --
23 that would have to come from
24 Janet.

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1 BY MR. SIMMER:
2 Q. But that's how the system
3 worked, right?
4 MS. McENROE: Objection to
5 form.
6 THE WITNESS: Janet would
7 have to tell you exactly how the
8 system worked, because honestly I
9 didn't do the legwork to make
10 those determinations.
11 BY MR. SIMMER:
12 Q. Let's read on, the next
13 sentence where you say, "Janet's group is
14 running the reports for this store today
15 and we should be able to determine
16 whether or not their orders should be
17 increased past the current threshold,"
18 right?
19 A. Yes, sir.
20 Q. And that's what we were just
21 talking about, that Janet's group is the
22 one that actually ran the reports to
23 determine whether there was legitimate
24 need in order to increase the threshold,

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1 right?
2 A. Yes, sir.
3 Q. Have you seen those reports
4 before?
5 A. I may have in time. But
6 I -- I don't recall.
7 Q. Do you have an understanding
8 what those reports included?
9 A. I do not.
10 Q. Did it simply include
11 whether there was a legitimate business
12 need, as you described it?
13 MS. McENROE: Objection to
14 form.
15 THE WITNESS: I do not know,
16 because I don't recall seeing
17 them.
18 BY MR. SIMMER:
19 Q. Additional sales for
20 example, is that what it -- what it
21 required?
22 MS. McENROE: Objection to
23 form.
24 THE WITNESS: As I said, I

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1 don't recall.
2 BY MR. SIMMER:
3 Q. Okay. Look at the next
4 e-mail on the chain here, from Ms. Hart
5 that same day at 10:29 a.m. Do you see
6 where I am?
7 A. Yes, sir.
8 Q. And you see where you're --
9 or this e-mail was sent to you from
10 Ms. Hart?
11 A. Yes -- yes, sir.
12 Q. And she's -- you see where
13 she says, "To all, from the distribution
14 side, it's extremely important to have a
15 series of checks and balances in place to
16 identify 'excessive orders' and/or
17 'suspicious orders.'"
18 Let me just stop right
19 there. Is there a difference between an
20 excessive order and a suspicious order?
21 MS. McENROE: Objection to
22 form.
23 THE WITNESS: In my opinion,
24 yes.

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1 BY MR. SIMMER:
2 Q. How do they differ?
3 A. Excessive is just that, it's
4 excessive to the point that it's more
5 than -- more than historically the store
6 would order.
7 Suspicious would be
8 something out of the ordinary, not just
9 from a number, but maybe from a number
10 and a frequency.
11 Q. Let me ask you. So are all
12 excessive orders suspicious?
13 MS. McENROE: Objection to
14 form.
15 THE WITNESS: I do not think
16 so, no.
17 BY MR. SIMMER:
18 Q. Are all excessive orders
19 potentially suspicious?
20 MS. McENROE: Objection to
21 form.
22 THE WITNESS: In my opinion,
23 no.
24 BY MR. SIMMER:

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1 Q. Are all suspicious orders
2 potentially excessive?
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: I -- no.
6 BY MR. SIMMER:
7 Q. Based on your work as senior
8 director supply chain regulatory
9 compliance, do you have any idea what the
10 correlation is between an excessive order
11 and a suspicious order?
12 MS. McENROE: Objection to
13 form.
14 THE WITNESS: I want to make
15 sure I understand your question.
16 So are you asking do I understand
17 the difference between the two?
18 BY MR. SIMMER:
19 Q. I asked whether there is a
20 correlation between them.
21 MS. McENROE: Objection to
22 form.
23 THE WITNESS: There -- there
24 could be.

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1 BY MR. SIMMER:
2 Q. I'm not asking whether it
3 could be.
4 So your system is
5 identifying excessive orders, right?
6 A. It would --
7 MS. McENROE: Objection to
8 form.
9 THE WITNESS: Our system
10 would identify both.
11 BY MR. SIMMER:
12 Q. Okay. So if I -- if your
13 system is identifying excessive orders
14 beyond the threshold, right?
15 A. Yes, sir.
16 Q. I'm asking do you have
17 any -- any idea how -- what the frequency
18 is where that excessive order actually
19 turned out to be a suspicious order?
20 MS. McENROE: Objection to
21 form.
22 THE WITNESS: I don't recall
23 any suspicious orders during my
24 tenure with Rite Aid.

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1 BY MR. SIMMER:
2 Q. So the fact that you were
3 identifying excessive orders has no
4 correlation at all to there being any
5 suspicious orders, right?
6 MS. McENROE: Objection to
7 form.
8 THE WITNESS: I would agree.
9 BY MR. SIMMER:
10 Q. Because your system didn't
11 identify any suspicious orders, right?
12 MS. McENROE: Objection to
13 form.
14 THE WITNESS: Not that I
15 recall.
16 BY MR. SIMMER:
17 Q. And what is your
18 understanding how why identifying orders
19 over 5,000 units per month would identify
20 suspicious orders?
21 MS. McENROE: Objection to
22 form.
23 THE WITNESS: Could you ask
24 that again, please?

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1 BY MR. SIMMER:
2 Q. Sure.
3 Based on your experience as
4 senior director supply chain regulatory
5 compliance, do you have any understanding
6 how identifying orders over 5,000 units
7 per month would identify suspicious
8 orders?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: I do not.
12 BY MR. SIMMER:
13 Q. Based on your experience as
14 senior director of supply chain
15 regulatory compliance, do you know what
16 happened if Rite Aid identified an order
17 as being excessive?
18 A. Yes, I do.
19 Q. What happened?
20 A. So, there was a policy in
21 place, Rite Aid would actually contact --
22 the Rite Aid distribution center would
23 contact the store and ask the store, hey,
24 we got an order for 53 units, did you

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1 mean to order 53 units. Depending on
2 what they said, again typically, I think
3 we talked about this earlier, they would
4 say, "No, I'm sorry, the order, it should
5 be five," or, "It should be three."
6 They would make a note of
7 that on a log. And then cut that order
8 back to whatever the true amount was that
9 was -- that should have been ordered.
10 Q. In the example, if -- if the
11 order was being filled in the middle of
12 the night, what would the overnight shift
13 do at Perryman if an order came in that
14 was over the threshold?
15 A. I think -- well, they did a
16 couple things. First of all, you can't
17 contact the store in the middle of the
18 night. So sometimes I'm sure nothing was
19 done. It may have just automatically
20 been cut back. And then I'm sure there
21 were probably times where they may have
22 left a note for somebody on the dayshift
23 that, hey, this happened at nightshift.
24 If that order had not shipped already for

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1 the dayshift to contact somebody from the
 2 store.
 3 Again, all of that would be
 4 my -- just my opinion based on -- I
 5 wouldn't know when the order -- when it
 6 left the building. But again, if it was
 7 still in the building, they would have
 8 the ability to call. Otherwise they
 9 would just automatically cut it down to
 10 the threshold before shipping.
 11 Q. So in the example where they
 12 were cutting it back like that, they
 13 would cut it back to simply the threshold
 14 and then somebody else would follow up
 15 later; is that right?
 16 A. That could happen, yes.
 17 Q. Or -- or it could also
 18 happen that nobody ever called the
 19 pharmacy to check about why the order
 20 exceeded the threshold, right?
 21 A. That could be true as well.
 22 Q. So is it the case that the
 23 part that was actually shipped was deemed
 24 to have not been excessive, right?

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1 MS. McENROE: Objection to
 2 form.
 3 THE WITNESS: Based on the
 4 thresholds, that would be correct.
 5 BY MR. SIMMER:
 6 Q. Let me read on in Ms. Hart's
 7 e-mail and ask you a few questions about
 8 it.
 9 In that first paragraph,
 10 the -- the last sentence, do you see
 11 where she says, "You may have read
 12 articles about enormous fines certain
 13 wholesalers have paid for shipping
 14 excessive/suspicious orders."
 15 Do you see that?
 16 A. Yes, sir.
 17 Q. Is that something you all
 18 were talking about, about what was going
 19 on in the industry with these -- these
 20 enormous fines?
 21 MS. McENROE: Objection to
 22 form.
 23 THE WITNESS: I don't
 24 recall.

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1 BY MR. SIMMER:
 2 Q. So this isn't something you
 3 recall having spoken about, that we need
 4 to -- to make sure we have a series of
 5 checks and balances in place to avoid
 6 these kinds of enormous fines?
 7 A. I mean obviously I've known
 8 about suspicious order monitoring and
 9 excessive order monitoring my entire
 10 tenure. So that's always been a goal of
 11 ours, to make sure that we are compliant
 12 and that we are doing things by the
 13 letter of the law.
 14 Q. Look at the second
 15 paragraph. Do you see where she says --
 16 I'll read it into the record. "If there
 17 is a store that exceeds the criteria that
 18 the DC has established as 'excessive
 19 order' for any controlled substance,
 20 please forward to me immediately and I
 21 can quickly" -- strike that -- "and I can
 22 review quickly and authorize."
 23 Do you see that?
 24 A. Yes, sir.

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1 Q. Is that the process that
 2 she's describing that you're familiar
 3 with from your time working at the
 4 company?
 5 A. Yes, sir.
 6 Q. So that if there was an
 7 excessive order that came in for a
 8 controlled substance, those went to
 9 Janet's department for review and
 10 approval?
 11 MS. McENROE: Objection to
 12 form.
 13 THE WITNESS: Yes, sir.
 14 BY MR. SIMMER:
 15 Q. And you see where she goes
 16 on in the next sentence, "There is a
 17 system in place to authorize the
 18 increased threshold and to review the
 19 authorization every six months for
 20 compliance and continued usage."
 21 Do you see that?
 22 A. Yes, sir.
 23 Q. So this was only reviewed
 24 every six months; is that right?

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1 A. I believe that to be true.
2 Q. Let me read in the next
3 paragraph where she says, "The threshold
4 for Rite Aid Number 2389, based on
5 replenishment data, usage, and
6 verification of prescription dispensing
7 for hydrocodone 5/500 milligrams Number
8 500 may be increased to 20 bottles per
9 week."
10 Let me just stop there.
11 Can you just break down what
12 she said there?
13 A. That based on the
14 replenishment data, usage and
15 verification of prescription dispensing,
16 hydrocodone has now been increased to 20
17 bottles per week. So that now means the
18 distribution center can ship 20 bottles
19 per week.
20 Q. So she's -- if I have it
21 right, she's approved the shipment over
22 the threshold, right?
23 A. Yes, sir.
24 Q. And what she's describing in

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1 that sentence is what she's reviewed in
2 order to make that decision to increase
3 the threshold, right?
4 MS. McENROE: Objection to
5 form.
6 THE WITNESS: That's how I
7 understand it, yes, sir.
8 BY MR. SIMMER:
9 Q. So what she says she's done
10 is reviewed the replenishment data,
11 right?
12 A. Yes, sir.
13 Q. And what is the
14 replenishment data?
15 A. I don't -- I don't know.
16 I'm assuming that's based off sales.
17 Q. And where she says usage, do
18 you know what that would be?
19 A. Again, the dispensing.
20 Q. And verification of
21 prescription dispensing, do you see that
22 as well?
23 A. Yes, sir.
24 Q. Is that different than

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1 usage?
2 MS. McENROE: Objection to
3 form.
4 THE WITNESS: Usage is
5 probably not -- not the best word
6 to use.
7 I would have probably just
8 left it at replenishment data and
9 verification of prescription
10 dispensing.
11 BY MR. SIMMER:
12 Q. So she seems to be
13 describing the fact that in order to make
14 this threshold increase determination,
15 she's looked at dispensing data, right?
16 A. That's how I read it, that's
17 correct.
18 Q. Let me read on. She goes on
19 to say, "If their usage continues to
20 increase Rite Aid can raise the threshold
21 accordingly."
22 Do you see that?
23 A. Yes, sir.
24 Q. Again, that's consistent

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1 with your understanding of the process
2 that the company had in place, right?
3 A. That's correct.
4 Q. So just generally speaking,
5 what she's describing in this e-mail
6 appears to be the company's excessive
7 order monitoring program, right?
8 MS. McENROE: Objection to
9 form.
10 THE WITNESS: It's the
11 company threshold.
12 BY MR. SIMMER:
13 Q. So the company had
14 thresholds in place?
15 A. Yes.
16 Q. If the pharmacy wanted more
17 than was allowed by the threshold, they
18 could request an increase, that went to
19 Janet Hart's department, government
20 relations. They would do a review and
21 make a -- determine whether they can get
22 more than the thresholds allowed, right?
23 MS. McENROE: Objection to
24 form.

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1 THE WITNESS: Yes, that's
2 correct.
3 BY MR. SIMMER:
4 Q. Is there anything else about
5 the suspicious order monitoring program
6 or excessive order monitoring program
7 that you understood happened beyond what
8 she's described here?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: Not that I
12 recall.
13 BY MR. SIMMER:
14 Q. So does the company use the
15 terms "excessive order monitoring
16 program" and "suspicious order monitoring
17 programs" to mean the same thing?
18 MS. McENROE: Objection to
19 form.
20 THE WITNESS: No, sir.
21 BY MR. SIMMER:
22 Q. How are they different?
23 A. Again, excessive, I think we
24 just talked about this a few moments ago.

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1 Excessive is just that, it's excessive
2 based on a normal pattern of ordering.
3 Suspicious would be something that's way
4 out of the ordinary.
5 Q. So the excessive order
6 monitoring program really doesn't
7 identify suspicious orders at all, does
8 it?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: It -- it
12 could.
13 BY MR. SIMMER:
14 Q. But is that what its aim is,
15 is to identify suspicious orders?
16 MS. McENROE: Objection to
17 form.
18 THE WITNESS: I think our --
19 our responsibility is to remain
20 open-minded every day about
21 looking for suspicious and/or
22 excessive orders.
23 BY MR. SIMMER:
24 Q. That wasn't my question.

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1 I'm asking whether the excessive order
2 monitoring program actually identifies
3 suspicious orders. That -- was that its
4 aim?
5 MS. McENROE: Objection to
6 form.
7 THE WITNESS: No, it was
8 not.
9 MR. SIMMER: Can we take our
10 lunch break?
11 THE VIDEOGRAPHER: The time
12 is now 12:32 p.m. We're going off
13 the record.
14 (Lunch break.)
15 THE VIDEOGRAPHER: The time
16 is now 1:24 p.m. We are back on
17 the record.
18 BY MR. SIMMER:
19 Q. Sir, this morning you
20 discussed the fact that you and a group
21 of other individuals at internal
22 assurance in 2009 started what I think
23 you called a -- a CSA team, correct?
24 MS. McENROE: Objection to

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1 form.
2 THE WITNESS: Yes, sir.
3 BY MR. SIMMER:
4 Q. And I think you said that
5 you developed a checklist of some kind
6 that you went out and used then to
7 conduct audits of the distribution
8 centers; is that correct?
9 A. The teams conducted the
10 audits, correct, yes, sir.
11 Q. Okay. I'll hand you what
12 I'll identify for the record in a moment.
13 Just have you look at it.
14 (Document marked for
15 identification as Exhibit Rite Aid
16 Mitchell-7.)
17 BY MR. SIMMER:
18 Q. This came out of the file,
19 your custodial file materials that the
20 company produced to us that was in one of
21 the documents that -- that they
22 identified as coming from your files.
23 I'll identify it for the
24 record as Rite_Aid_OMDL_0020535.

<p style="text-align: right;">Page 178</p> <p>1 It was produced natively, 2 which means, sir, that it was produced 3 electronically, so that all of the pages 4 in here have the same Bates number at the 5 bottom, because it was a spreadsheet. 6 If you just there's only one 7 area that I want to specifically ask you 8 about, but by all means look at the 9 entire document. I'll direct your 10 attention to one page in specific in a 11 minute after you -- after you had a 12 chance to look at it. 13 A. Okay. 14 Q. Can you tell us what this 15 document is? 16 A. This is the checklist that 17 the self-assessment teams used in 18 conducting audits at distribution 19 centers. 20 Q. Is this the one that the CSA 21 team developed or is this something 22 different? 23 A. This is the one that was 24 developed by the CSA team.</p>	<p style="text-align: right;">Page 180</p> <p>1 place at some point in time? 2 A. Yes, sir. 3 Q. And am I right -- I think 4 from your testimony this morning, you 5 said that the scoring system was put in 6 place by your CSA team? 7 A. By internal assurance, yes. 8 Q. Oh, internal assurance put 9 the scoring system in place? 10 A. Correct. 11 Q. Okay. Could I direct your 12 attention to the first page of this 13 spreadsheet. And it's very small print. 14 I think we'll have -- 15 MS. KEARNEY: I'm going to 16 print out a copy. 17 MR. SIMMER: He doesn't have 18 a copy of it? Got it. 19 BY MR. SIMMER: 20 Q. Well, on the first page of 21 this spreadsheet, and it has a grayscale 22 box at the top. 23 A. Yes, sir. 24 Q. Do you see where it says</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. And the purpose of this was 2 to audit the distribution centers for how 3 they were handling controlled substances, 4 correct? 5 MS. McENROE: Objection to 6 form. 7 THE WITNESS: Not just 8 controlled substances, but every 9 facet of the operation itself, to 10 include human resources, 11 transportation, et cetera. 12 BY MR. SIMMER: 13 Q. Okay. On the second page of 14 the exhibit, you see on the heading it 15 says "Rite Aid Corporation DC 16 Self-Assessment Program, Regulatory 17 Checklist Summary of Results"? 18 A. Yes, sir. 19 Q. And then there's a scoring 20 of some kind that is produced on that 21 page, right? 22 A. Yes, sir. 23 Q. Is that the scoring that I 24 asked you about that you said was put in</p>	<p style="text-align: right;">Page 181</p> <p>1 "Rite Aid Corporation DC Self-Assessment 2 Program regulatory checklist, 3 regulatory/inspector site visits, revised 4 August 2, 2010"? 5 Do you see that? 6 A. Yes, sir. 7 Q. And over on the right-hand 8 side, there's a fill-in place for 9 distribution center. It says Perryman. 10 And am I right that that's an indication 11 of which distribution center was being 12 reviewed in this particular form, as you 13 see it? 14 A. Yes, sir. That's correct. 15 Q. And it says that it's 16 completed by Mike Hertzke. 17 Do you know who that is? 18 A. Yes, I do. 19 Q. Who is that? 20 A. Mike was the receiving 21 manager in Lancaster, California. 22 Q. And did he work in the 23 insurance department that you talked 24 about earlier?</p>

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1 MS. McENROE: Objection to
2 form.
3 THE WITNESS: No, he did
4 not.
5 BY MR. SIMMER:
6 Q. So what job did he hold?
7 A. Receiving manager in
8 Lancaster, California.
9 Q. So I think you talked about
10 this morning that in terms of how these
11 audits actually took place, you would not
12 audit your own distribution center, that
13 people were brought in from other
14 distribution centers to conduct the
15 audit; is that right?
16 A. That's correct.
17 Q. And is that what's going on
18 here, Mike was the one who did this audit
19 for Perryman?
20 A. For the regulatory section,
21 it looks that way, yes, sir.
22 Q. Okay. And then it also says
23 a date, March 23rd, 2011.
24 Do you see that?

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1 A. Yes, sir.
2 Q. Do you have any
3 understanding of what that date is
4 showing?
5 A. The date that the audit was
6 conducted by Mike at Perryman. Yes, sir.
7 Q. And then it lists two people
8 under sources below that.
9 Do you see that?
10 A. I do.
11 Q. And it says Norman Dunkinson
12 and Howard Johnson. What is that
13 indicating?
14 A. Norman is the -- or was the
15 general manager. I don't know who Howard
16 Johnson is.
17 Q. Is that some indication that
18 these are the two individuals from
19 Perryman that worked on the audit with
20 Mr. Hertzke?
21 A. It looks as if they were
22 sources, so if he had questions, they
23 would be people he would ask questions
24 to. But they were -- again, I don't know

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1 Howard, but Norman was the GM in
2 Perryman.
3 Q. Let's just go back a minute.
4 You said there was this CSA team. Where
5 did you get that title, CSA team, if you
6 know?
7 A. It was certified
8 self-assessment, and it was developed by
9 the internal assurance group. And I
10 think earlier when we talked about this
11 this morning, we thought Controlled
12 Substance Act came out, but it was
13 actually a certified self-assessment.
14 Q. So as you said a moment ago,
15 it's not just about how they were
16 handling controlled substances, it's all
17 aspects of the work the distribution
18 centers were conducting, right?
19 A. That's correct, sir.
20 Q. So what specifically in this
21 certified self-assessment had to do with
22 controlled substances?
23 A. The checklist that's here.
24 Q. Okay. Let me direct your

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1 attention to one item specifically. And
2 I can't -- can we -- oh, yeah, it's -- in
3 the upper right-hand corner there are
4 little numbers. Do you see where it says
5 A.08.02?
6 A. Yes, sir.
7 Q. And I think that's how each
8 page of the spreadsheet seems to be
9 organized in this document. Would you
10 agree with me on that?
11 A. Yes, sir.
12 Q. Okay. I want to direct your
13 attention to Line 48 of the document,
14 it's very small print. So it might be
15 most helpful for the videographer to blow
16 up that red text there. And then we
17 can -- and maybe your eyesight is better
18 than mine. But I think I'm going to wait
19 for him to pull it up on the screen so I
20 can see it.
21 Are you with me, on Line 48?
22 A. I am. Yes, sir.
23 MS. McENROE: Can you read
24 it?

<p style="text-align: right;">Page 186</p> <p>1 BY MR. SIMMER:</p> <p>2 Q. Your eyes are better than</p> <p>3 mine.</p> <p>4 A. Well, it's only because I</p> <p>5 have help.</p> <p>6 MS. McENROE: The witness is</p> <p>7 holding up his reading glasses.</p> <p>8 BY MR. SIMMER:</p> <p>9 Q. Let me read what it says in</p> <p>10 Line 48 and ask you a few questions about</p> <p>11 it, if I could.</p> <p>12 A. Yes.</p> <p>13 Q. Do you see where it says,</p> <p>14 "Does the registrant review the 24-hour</p> <p>15 logs sent by the cross-dock DCs on a</p> <p>16 regular (sic) basis and report violations</p> <p>17 to the director of regulatory compliance</p> <p>18 and to the DEA?"</p> <p>19 Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. She corrected me.</p> <p>22 MR. SIMMER: What did I say?</p> <p>23 MS. KEARNEY: You said</p> <p>24 regular basis.</p>	<p style="text-align: right;">Page 188</p> <p>1 to include controlled substances, into a</p> <p>2 cross-dock freight forwarding DC, put in</p> <p>3 a caged area. Had very specific security</p> <p>4 guidelines that had to be followed, et</p> <p>5 cetera.</p> <p>6 And those drugs had 24 hours</p> <p>7 to leave the facility and be delivered to</p> <p>8 a store.</p> <p>9 Q. There's a lot in that answer</p> <p>10 that I don't understand. So you're going</p> <p>11 to have to go back and help me.</p> <p>12 A. Okay.</p> <p>13 Q. So what is the individual's</p> <p>14 name at the DEA? You said Jim?</p> <p>15 A. Jim Krahulec was actually</p> <p>16 the vice president of government affairs</p> <p>17 for Rite Aid Corporation.</p> <p>18 Q. Okay. And how do you spell</p> <p>19 his last name?</p> <p>20 A. K-R-A-H-U-L-E-C.</p> <p>21 Q. And do you know when this</p> <p>22 MOU was entered into with the DEA?</p> <p>23 A. I believe it was 1999.</p> <p>24 Q. So a year prior to your</p>
<p style="text-align: right;">Page 187</p> <p>1 BY MR. SIMMER:</p> <p>2 Q. I said regular basis. I</p> <p>3 meant -- excuse me. It should say "daily</p> <p>4 basis."</p> <p>5 With that correction, did I</p> <p>6 read it otherwise correctly?</p> <p>7 A. Yes, sir, you did.</p> <p>8 Q. Okay. What is this talking</p> <p>9 about here?</p> <p>10 A. There is a -- prior to --</p> <p>11 prior to me starting with Rite Aid, there</p> <p>12 was a memorandum of understanding put in</p> <p>13 place with government affairs,</p> <p>14 specifically Jim Krahulec and DEA.</p> <p>15 So that MOU, as I remember,</p> <p>16 basically stated that Rite Aid</p> <p>17 distribution centers that used to hold a</p> <p>18 DEA registration could give up those</p> <p>19 registrations in lieu of the MOU, meaning</p> <p>20 they would now become a freight</p> <p>21 forwarding facility.</p> <p>22 And what DEA agreed to do is</p> <p>23 give Rite Aid permission to ship all</p> <p>24 pharmaceuticals -- all pharmaceuticals,</p>	<p style="text-align: right;">Page 189</p> <p>1 joining the company?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And do you know what the</p> <p>4 subject of the MOU was that the company</p> <p>5 entered into with the DEA?</p> <p>6 A. I believe it was called</p> <p>7 cross-dock facilities.</p> <p>8 Q. And what is a cross-dock</p> <p>9 facility?</p> <p>10 A. It basically -- again, it</p> <p>11 allowed Rite Aid of West Virginia or</p> <p>12 Poca, West Virginia; Pontiac, Michigan;</p> <p>13 Rome, New York, as a few examples, back</p> <p>14 in the day, prior to my arrival</p> <p>15 distributed pharmaceuticals.</p> <p>16 They gave up their license</p> <p>17 with DEA to no longer distribute, but to</p> <p>18 now become a cross-dock facility, so that</p> <p>19 Perryman or Woodland, California could</p> <p>20 distribute all pharmaceuticals into those</p> <p>21 locations with the understanding they</p> <p>22 could only stay 24 hours or less and had</p> <p>23 to be under security the entire time.</p> <p>24 Q. So again, I'm just trying to</p>

<p style="text-align: right;">Page 190</p> <p>1 get the terminology. A cross-dock 2 facility is a what? What is that? 3 A. It's basically a freight 4 forwarding facility. Or, if you use 5 FedEx or UPS, it's like a hub. 6 Q. And this line 48 talks about 7 a 24-hour log. What is that? 8 A. That's the 24-hour rule that 9 Rite Aid entered into with DEA. 10 So we logged time that the 11 product arrived at the facility and time 12 that the last shipment left the facility 13 to ensure that we were meeting the spirit 14 of the MOU. 15 THE COURT REPORTER: Spirit 16 of the what? 17 THE WITNESS: Memorandum of 18 understanding. I'm sorry. 19 BY MR. SIMMER: 20 Q. And so this checklist 21 included -- this is one of the criteria 22 that distribution centers were evaluated 23 on, right? 24 A. That's correct. Being that</p>	<p style="text-align: right;">Page 192</p> <p>1 THE WITNESS: If I could 2 just have a moment to review the 3 checklists. 4 To answer your question, I 5 see in Question Number 15 on 6 A.08.02 does not specifically 7 mention a suspicious order 8 monitoring. But it does mention 9 the excessive order monitoring 10 procedure. 11 MR. SIMMER: Can we pull 12 that up on the screen? 13 BY MR. SIMMER: 14 Q. So one of the criteria they 15 were looking for on Line 15 says, "Is 16 there a written excessive order 17 monitoring procedure?" 18 That -- that's one of the 19 items that you and the CSA team put in 20 this -- this checklist, right? 21 A. Correct. 22 Q. And this doesn't say 23 suspicious order monitoring, it says 24 excessive order monitoring, right?</p>
<p style="text-align: right;">Page 191</p> <p>1 Perryman is the registrant, it's 2 imperative that the DCs that fall under 3 the MOU are compliant. Because at the 4 end of the day Perryman would be the one 5 that would have to answer to DEA. 6 Q. Okay. So anything in this 7 particular item on the checklist have to 8 do with the suspicious order monitoring 9 program? 10 MS. McENROE: Objection to 11 form. 12 THE WITNESS: This one would 13 not, no, sir. 14 BY MR. SIMMER: 15 Q. Did it have anything to do 16 with the excessive order monitoring 17 program? 18 A. This would not, no, sir. 19 Q. Is there any item on this 20 checklist that you could identify that 21 had to do with the suspicious order 22 monitoring program? 23 MS. McENROE: Objection to 24 form.</p>	<p style="text-align: right;">Page 193</p> <p>1 MS. McENROE: Objection to 2 form. 3 THE WITNESS: Yes, sir. 4 BY MR. SIMMER: 5 Q. And then Line 16, do you see 6 where it says, "Is an ARCOS file kept 7 capturing all RC 80, 87 and 007 8 adjustments to C3A controlled drugs?" 9 Do you see that? 10 A. Yes, sir. 11 Q. And what is that in 12 reference to? 13 A. Any adjustments that would 14 be made to a controlled substance order. 15 Q. What is an example of some 16 adjustments that would be identified 17 here? 18 A. So for example cutting an 19 order back could be a reason code used 20 for an adjustment. 21 Q. Okay. And look at Line 17. 22 Do you see where it says, "If a threshold 23 is ever adjusted, is documentation 24 available to support the change?"</p>

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1 Do you see that?

2 A. Yes, sir, I do.

3 Q. And what would that include?

4 A. The documents that Janet

5 Hart would have provided to the DCs any

6 time a change would be made to the

7 current threshold.

8 Q. And that's something I think

9 we talked about earlier, looking at some

10 other exhibits, what the government

11 relations people would do, creating

12 paperwork to explain the -- any

13 adjustment, or any adjustments over the

14 threshold, right?

15 A. Yes, sir.

16 Q. Okay. Look at Line 18 if

17 you would. "Verify that the controlled

18 drug procedure is known and available."

19 What is that in reference

20 to?

21 A. That's in reference to

22 making sure that the controlled drug

23 procedure is available and that people

24 understand what the controlled drug

Page 195

1 procedure entails.

2 Q. What is that procedure?

3 A. I want to make sure I

4 understand your question.

5 Q. The reference is a

6 controlled drug procedure. I'm just

7 trying to understand, what -- what are we

8 talking about?

9 A. The procedure on how to

10 handle controlled substances within the

11 Perryman -- within any pharmaceutical

12 distribution center.

13 Q. Is that in reference to the

14 threshold?

15 MS. McENROE: Objection to

16 form.

17 THE WITNESS: It would

18 include the threshold, or it would

19 include, I'm sorry, the excessive

20 order monitoring and suspicious

21 order monitoring.

22 BY MR. SIMMER:

23 Q. So in -- in Column C, right

24 after that, it has ADM-10. Do you know

Page 196

1 what that's in reference to?

2 A. If I'm not mistaken -- I

3 know early on we spoke about a blue

4 binder, a blue distribution binder.

5 ADM-10, as I recall, was the procedure.

6 Q. Could I direct your

7 attention to two pages later at A.08.04.

8 And I think the numbering starts over

9 again, so I think it's a little

10 confusing.

11 Here we go. So look at the

12 bottom of the page, line -- Lines 13 and

13 14 if you would. 13 and 14, there we go.

14 Do you see under Line 13

15 where it says, "Are the appropriate

16 inventory controls in place to detect and

17 document any theft, counterfeiting or

18 diversion of drugs or devices?"

19 Do you see that?

20 A. Yes, sir.

21 Q. Do you know what was done to

22 actually audit for that particular item?

23 A. I do not recall.

24 Q. So when it says controls in

Page 197

1 place, what are -- what are the types of

2 controls in place that that's in

3 reference to?

4 A. If -- you know, again, I

5 would just want to preface that I don't

6 remember exactly what the audit team

7 would have done. But I would -- I would

8 be looking for inventory adjustments

9 along with potentially a 106 if there

10 were true theft identified in this.

11 Q. When it says in reference to

12 diversion though, it -- what type of

13 diversion are we looking for there?

14 MS. McENROE: Objection to

15 form.

16 THE WITNESS: I would say

17 we're looking for any kind of

18 diversion, anything that's again

19 out of the norm.

20 BY MR. SIMMER:

21 Q. Not just theft from the

22 distribution center, but any kind of

23 diversion diverting a drug to an

24 inappropriate use, right?

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1 MS. McENROE: Objection to
2 form.
3 THE WITNESS: Or -- that
4 could be true. It could be in a
5 different department it shouldn't
6 be in. It could be just as simple
7 as that. Just a lack of control.
8 BY MR. SIMMER:
9 Q. Do you know how the -- the
10 audit team reviewed this particular audit
11 finding or element to make a decision
12 whether the -- the distribution center
13 was in compliance or not?
14 MS. McENROE: Objection to
15 form.
16 THE WITNESS: I would assume
17 that they did a controlled drug
18 accountability on the items to
19 ensure that those numbers
20 balanced, which would show proper
21 control over receipts, sales, the
22 whole gamut.
23 BY MR. SIMMER:
24 Q. Is that actually looking

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1 then at shipments to, you know, that --
2 that Perryman was making to determine
3 whether there was any diversion --
4 evidence of diversion there?
5 A. Yes --
6 MS. McENROE: Objection to
7 form.
8 THE WITNESS: Yes, sir. It
9 would -- it would look at a couple
10 things. So it would look at your
11 on-hand inventory at the
12 distribution center. It would
13 look at your inbound receipts
14 coming from the manufacturers
15 and/or McKesson in this case.
16 And it would also look at
17 our outbound shipments.
18 So once you do the math, you
19 know, add your inbound to your
20 existing minus your sales, you
21 should have an on-hand inventory.
22 And if that on-hand
23 inventory is truly what the system
24 says it is, then we show that

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1 we've got proper controls and
2 there's been no diversion.
3 BY MR. SIMMER:
4 Q. So in that particular
5 example, we're just counting numbers,
6 we're not actually digging into the
7 orders themselves to determine whether
8 there was any inappropriate order
9 included, right?
10 MS. McENROE: Objection to
11 form.
12 THE WITNESS: That would
13 have done prior to any shipments
14 being made.
15 BY MR. SIMMER:
16 Q. By whom?
17 A. By the pharmacy department.
18 Q. But not -- at -- out of the
19 Perryman center, they would not -- or
20 distribution center. They would not be
21 looking at whether the orders themselves
22 were appropriate, right?
23 MS. McENROE: Objection to
24 form.

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1 THE WITNESS: The Perryman
2 facility, those folks would be
3 looking.
4 The -- the CSA audit team,
5 if -- if that's what you're
6 asking, they would not know that.
7 BY MR. SIMMER:
8 Q. So what did the Perryman
9 facility folks do to determine whether
10 the orders were appropriate?
11 MS. McENROE: Objection to
12 form.
13 THE WITNESS: There -- in
14 the excessive order monitoring
15 program, they -- they have a
16 checklist internally that they
17 would use to identify what -- what
18 was quantities and what -- what
19 was the NDC of the items coming
20 in. They would then review that.
21 And there were things even less
22 than the threshold that could look
23 excessive to them. So if -- you
24 know, if my store typically orders

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1 two of something each week, which
2 is well below the threshold, if
3 they all of a sudden order seven,
4 because you have the same people
5 picking orders day in and day out,
6 that looks excessive.
7 BY MR. SIMMER:
8 Q. So you're just looking at
9 excessive orders, not suspicious orders?
10 A. Well --
11 MS. McENROE: Did you finish
12 your answer?
13 THE WITNESS: Yes and no.
14 There -- there -- I want
15 to -- I want to kind of correct
16 what I said earlier today too, if
17 I -- if I may.
18 BY MR. SIMMER:
19 Q. No, there's not a question
20 pending on that, so --
21 A. Okay. So I'll move on.
22 Could you please repeat your
23 question again.
24 Q. So my question is, this

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1 process you've talked about, where the
2 Perryman folks would have looked at this,
3 they are identifying excessive orders,
4 not suspicious orders, right?
5 MS. McENROE: Objection to
6 form.
7 THE WITNESS: Excessive
8 orders could turn into suspicious
9 orders.
10 BY MR. SIMMER:
11 Q. But they are only really
12 looking at the total number of count of
13 orders relative to a prior period, right?
14 MS. McENROE: Objection to
15 form.
16 THE WITNESS: It's probably
17 better that one of them answer
18 that than me.
19 My understanding is that
20 they are looking at anything that
21 just looks abnormal. Again, it
22 could be small in size, it could
23 be large in size.
24 They would then question it.

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1 So again, if one store always
2 orders two of a specific item, and
3 all of the sudden they're ordering
4 anything greater than that, they
5 would then -- that would be kind
6 of an eye opener to them.
7 They would then in turn call
8 the store, verify if you really
9 truly needed that seven or if that
10 order should be cut back to two.
11 And they have logs that they keep
12 in the control drug cage that
13 annotate every -- every call they
14 made, who they spoke to, what the
15 outcome of the call was, and if
16 that order was in turn reduced or
17 not.
18 BY MR. SIMMER:
19 Q. And you had nothing to do
20 with that process that you've described,
21 right?
22 MS. McENROE: Objection to
23 form.
24 THE WITNESS: That's

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1 correct. I worked at the
2 corporate headquarters. I did not
3 work at the DC.
4 BY MR. SIMMER:
5 Q. So when you talked about
6 your understanding, you're just
7 speculating, aren't you?
8 MS. McENROE: Objection.
9 BY MR. SIMMER:
10 Q. What they actually did,
11 right?
12 MS. McENROE: Objection to
13 form.
14 THE WITNESS: No. During
15 audits, I've actually seen it
16 happen. I've witnessed it.
17 BY MR. SIMMER:
18 Q. Tell us when -- what times
19 you recall having witnessed that
20 occurring.
21 A. I can't give you specific
22 timelines, but during my 11 and a half
23 years of employment there.
24 Q. But you can't tell us

<p style="text-align: right;">Page 206</p> <p>1 specifically what happened? 2 MS. McENROE: Objection to 3 form. Asked and answered. 4 THE WITNESS: No. That's 5 19 years ago to seven years ago, I 6 don't recall a specific date. 7 BY MR. SIMMER: 8 Q. So did you actually 9 participate ever on any of these calls 10 that the distribution center made to a 11 pharmacy to call -- to question whether 12 the order was suspicious or not? 13 A. Did I participate? No, I 14 did not. 15 Q. So in the Perryman center -- 16 let me have -- see if I get this right. 17 It was the order picker that would flag 18 whether it was a potentially suspicious 19 order; is that right? 20 MS. McENROE: Objection to 21 form. 22 THE WITNESS: That is 23 correct. 24 BY MR. SIMMER:</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. So were there any objective 2 criteria used by the order picker in 3 order to determine whether an order was 4 suspicious or not? 5 MS. McENROE: Objection to 6 form. 7 THE WITNESS: Correct. 8 BY MR. SIMMER: 9 Q. I didn't ask a yes-or-no 10 question. I said were there any 11 objective criteria used by the order 12 picker to determine whether it was 13 suspicious or not? 14 MS. McENROE: Objection to 15 form. 16 THE WITNESS: Again, their 17 experience. 18 BY MR. SIMMER: 19 Q. Were there any SOPs in place 20 that the company used to determine 21 whether an order was suspicious or not? 22 MS. McENROE: Objection to 23 form. 24 THE WITNESS: The company</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. And that is what your 2 understanding is? 3 A. That is correct. 4 Q. And the order picker would 5 use what criteria to decide whether an 6 order was suspicious or not? 7 MS. McENROE: Objection to 8 form. 9 THE WITNESS: They -- 10 experience from daily picking the 11 same stores' orders over and over. 12 They would be able to 13 identify something that looked 14 excessive and/or suspicious. 15 BY MR. SIMMER: 16 Q. And that's subjective, 17 right? 18 MS. McENROE: Objection to 19 form. 20 THE WITNESS: It could be. 21 But again, based on their 22 experience, they felt that it 23 looked outside of the norm. 24 BY MR. SIMMER:</p>	<p style="text-align: right;">Page 209</p> <p>1 did have SOPs for suspicious order 2 monitoring. 3 BY MR. SIMMER: 4 Q. And what were the criteria 5 used to determine whether an order was 6 suspicious or not from those SOPs? 7 A. I don't recall. 8 Q. But I think what you're 9 talking about, isn't it, that the pickers 10 would use their experience, right? 11 A. They would. 12 Q. Is it your testimony that 13 the order pickers were trained to 14 identify what they believe to be 15 suspicious orders? 16 A. Yes. 17 Q. Who did that training? 18 A. The pharmacy department team 19 at the DCs. 20 Q. And did they have training 21 materials they used for that training to 22 train the order pickers to determine what 23 was suspicious? 24 A. They had training materials</p>

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1 and signoffs from each associate that was
2 trained.
3 Q. And what were the training
4 materials they used for this training?
5 MS. McENROE: Objection to
6 form.
7 THE WITNESS: That, I cannot
8 answer. I don't know.
9 BY MR. SIMMER:
10 Q. Who prepared the training
11 materials?
12 A. The DC.
13 Q. You had nothing to do with
14 it?
15 A. I did not.
16 Q. Okay. Were these pickers
17 evaluated on how accurate they were in
18 determining whether orders were
19 suspicious or not?
20 MS. McENROE: Objection to
21 form.
22 THE WITNESS: That, I do not
23 know.
24 BY MR. SIMMER:

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1 Q. Do you know whether they
2 received any kind of bonuses or -- in
3 their -- in their evaluations related to
4 their accuracy of identifying suspicious
5 orders?
6 MS. McENROE: Objection to
7 form.
8 THE WITNESS: That, I do not
9 know.
10 BY MR. SIMMER:
11 Q. Do you know whether any
12 order pickers were ever fired for not
13 adequately identifying suspicious orders?
14 MS. McENROE: Objection to
15 form.
16 THE WITNESS: I do not know.
17 BY MR. SIMMER:
18 Q. Do you know if any part of
19 their evaluation whatsoever evaluated the
20 accuracy of their picking suspicious
21 orders?
22 MS. McENROE: Objection to
23 form.
24 THE WITNESS: I do not know.

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1 BY MR. SIMMER:
2 Q. Did anybody ever audit the
3 accuracy of their picking suspicious
4 orders?
5 MS. McENROE: Objection to
6 form.
7 THE WITNESS: I do not know.
8 BY MR. SIMMER:
9 Q. Yet, this is one of the
10 things that you and the CSA team did, is
11 put together that checklist? You didn't
12 put anything in your checklist that
13 mandated that the Perryman center and the
14 Woodland center was to be audited for the
15 accuracy of the pickers in identifying
16 suspicious orders; isn't that right?
17 MS. McENROE: Objection to
18 form.
19 THE WITNESS: We
20 identified -- what we required was
21 that there be an excessive order
22 and/or suspicious order monitoring
23 program and that it was being
24 used.

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1 And based on the results and
2 the documents from the DCs, it was
3 being used. It was being used
4 very effectively. And DEA as well
5 commented on just how good and
6 solid that program was.
7 MR. SIMMER: Move to strike
8 everything after "monitoring
9 program and that it was being
10 used." Everything after that is
11 nonresponsive to the question.
12 MS. McENROE: For the
13 purposes of the record, Rite Aid
14 disagrees. And we can fight it
15 out at the time of the trial. But
16 that you don't like the witness's
17 answer is not a basis to move to
18 strike.
19 MR. SIMMER: You know what?
20 I can make any objection I want
21 just like you can.
22 MS. McENROE: And I can --
23 MR. SIMMER: And you can
24 take it to the judge if you'd

<p style="text-align: right;">Page 214</p> <p>1 like.</p> <p>2 MS. McENROE: Yep. I can</p> <p>3 preserve it for the record. I</p> <p>4 said at the time of trial we can</p> <p>5 deal with it.</p> <p>6 MR. SIMMER: That's fine.</p> <p>7 BY MR. SIMMER:</p> <p>8 Q. Sir, is there anywhere in</p> <p>9 this document that you and the CSA team</p> <p>10 created the use of the word "suspicious"</p> <p>11 anywhere?</p> <p>12 MS. McENROE: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: I did not see</p> <p>15 that in the document, no.</p> <p>16 BY MR. SIMMER:</p> <p>17 Q. And in fact, the -- on the</p> <p>18 items that we just looked at, the four,</p> <p>19 five, six items that we looked at, they</p> <p>20 talk about excessive orders, don't they?</p> <p>21 A. Yes, they did.</p> <p>22 Q. They don't talk about</p> <p>23 suspicious orders, do they, anywhere in</p> <p>24 this document?</p>	<p style="text-align: right;">Page 216</p> <p>1 monitoring program in place, you would</p> <p>2 have put that in these criteria for the</p> <p>3 audit, wouldn't you?</p> <p>4 MS. McENROE: Objection to</p> <p>5 form.</p> <p>6 THE WITNESS: I would</p> <p>7 assume, yes.</p> <p>8 BY MR. SIMMER:</p> <p>9 Q. But you didn't. You only</p> <p>10 talk about excessive orders in this</p> <p>11 document; isn't that right?</p> <p>12 MS. McENROE: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: For this</p> <p>15 specific document, yes.</p> <p>16 BY MR. SIMMER:</p> <p>17 Q. Well, did it ever change</p> <p>18 during the time that you worked at the</p> <p>19 company, that actually was one of the</p> <p>20 criteria that was looked at, is whether</p> <p>21 they had -- they were actually doing</p> <p>22 suspicious order monitoring?</p> <p>23 MS. McENROE: Objection to</p> <p>24 form.</p>
<p style="text-align: right;">Page 215</p> <p>1 A. Specifically, I did not see</p> <p>2 it, no.</p> <p>3 Q. So when you talked about in</p> <p>4 your answer previously that you would --</p> <p>5 they were looking for excessive and/or</p> <p>6 suspicious orders, it's just excessive</p> <p>7 orders, isn't it?</p> <p>8 MS. McENROE: Objection to</p> <p>9 form.</p> <p>10 THE WITNESS: It depends on</p> <p>11 how you interpret it. But as it's</p> <p>12 written, yes.</p> <p>13 BY MR. SIMMER:</p> <p>14 Q. Well, the words are the</p> <p>15 words used in the document that you and</p> <p>16 the CSA team created, right?</p> <p>17 MS. McENROE: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: That's</p> <p>20 correct.</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. So if you wanted to evaluate</p> <p>23 these two distribution centers for</p> <p>24 whether they had a suspicious order</p>	<p style="text-align: right;">Page 217</p> <p>1 THE WITNESS: That may not</p> <p>2 have been part of this specific</p> <p>3 program, but it was part of my</p> <p>4 self-assessment, or my audits that</p> <p>5 I conducted independently of the</p> <p>6 CSA team.</p> <p>7 BY MR. SIMMER:</p> <p>8 Q. And you put that in writing</p> <p>9 someplace?</p> <p>10 A. Oh, there's certainly</p> <p>11 checklists out there, yes.</p> <p>12 Q. And that referred to</p> <p>13 suspicious order monitoring program,</p> <p>14 right?</p> <p>15 A. Yes, yes.</p> <p>16 Q. And where would we find that</p> <p>17 document?</p> <p>18 A. It -- it should be in my</p> <p>19 documents that I had when I was with the</p> <p>20 company.</p> <p>21 (Document marked for</p> <p>22 identification as Exhibit Rite Aid</p> <p>23 Mitchell-8.)</p> <p>24 BY MR. SIMMER:</p>

<p style="text-align: right;">Page 218</p> <p>1 Q. I'm going to hand you what 2 we marked as Exhibit 8. I'll identify it 3 for the record as an e-mail chain. It's 4 a two-page document, and it's Bates range 5 Rite_Aid_OMDL_0016204 to 0016205. 6 Could I direct your 7 attention to the last e-mail on this 8 string. It's to Robert Hensley from you 9 dated October 10th, 2007. 10 Do you see where I'm 11 looking? 12 A. Sorry. I don't have that. 13 Q. Last e-mail on the string. 14 Not the first e-mail. Not -- the top of 15 the page here, Robert Hensley. Do you 16 see that? First page. Do you see that? 17 A. Oh right. Yes. 18 Q. Okay. And do you see the 19 date on there, October 10, 2007? 20 A. Yes, sir. 21 Q. And you see the subject 22 line, control cage procedures, do you see 23 that? 24 A. Yes, sir.</p>	<p style="text-align: right;">Page 220</p> <p>1 acquisition? 2 A. Again, it kind of goes back 3 to what we were talking about earlier 4 today with -- with trying to normalize 5 all pharmacy distribution centers to make 6 sure that there was consistency in 7 policies, procedures and just how they 8 operated business. 9 Q. And who is Mr. Hensley? 10 A. Bob was the pharmacy manager 11 in Charlotte. 12 Q. And is he someone that came 13 over with the Brooks Eckerd acquisition? 14 A. Yes, sir, he is. 15 Q. And so are you sending 16 him -- as I understand it then, you are 17 sending him this information to inform 18 him of the procedures that Rite Aid had 19 in place that would impact him? 20 A. These were recommendations 21 or procedures that he should put in place 22 for Charlotte to ensure that there was 23 consistency in our administration of 24 policy.</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. And then below that there's 2 a list of attachments to this. Do you 3 see that? 4 A. Yes, sir. 5 Q. And just generally as you 6 look at that list, any idea what that 7 list is that you're including in your 8 e-mail to Mr. Hensley? 9 A. It looks like documents that 10 Perryman had put in place. And again, 11 this goes back during around the time 12 that Rite Aid acquired the Brooks Eckerd 13 DCs, and Bob Hensley was with the 14 Charlotte, North Carolina, distribution 15 center. 16 MS. McENROE: And for the 17 record, Exhibit 8 is just the 18 e-mail chain without exhibits? 19 MR. SIMMER: That's right. 20 MS. McENROE: Yes. 21 BY MR. SIMMER: 22 Q. All right. So how is it 23 relevant that this happened during the 24 time period between the Brooks Eckerd</p>	<p style="text-align: right;">Page 221</p> <p>1 Q. So he was a pharmacy manager 2 in Charlotte. Is that a distribution 3 center? 4 A. It was. 5 Q. Okay. So that was his 6 title, pharmacy manager at the Charlotte 7 distribution center? 8 A. Pharmacy department manager, 9 yes, sir. 10 Q. Okay. 11 (Document marked for 12 identification as Exhibit Rite Aid 13 Mitchell-9.) 14 BY MR. SIMMER: 15 Q. I'll hand you what we've 16 marked as Mitchell Exhibit 9. And what 17 we did, just to make this a cleaner 18 record, we just took two of the exhibits 19 here and what we're going to show you and 20 not every one of them, these procedures 21 that were attached to your e-mail. This 22 one is entitled, as you see, Control Drug 23 Above Average Order Monitoring Program. 24 Do you see that?</p>

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1 A. I do.
 2 Q. I'll identify it for the
 3 record as Rite_Aid_OMDL_0016253 through
 4 0016255.
 5 Take a moment to look at
 6 that if you would.
 7 A. Yes, sir. Okay.
 8 Q. Are you familiar with this
 9 document?
 10 A. I -- I have seen it, yes,
 11 sir.
 12 Q. Okay. And this one does not
 13 talk about excessive order monitoring
 14 program, it calls it an above average
 15 order monitoring program. Is there a
 16 difference?
 17 A. I think they were understood
 18 to be one and the same.
 19 Q. Who created this document,
 20 if you know, or this -- this program?
 21 MS. McENROE: Objection to
 22 form.
 23 THE WITNESS: The document
 24 I -- I don't know. The program

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1 was in place when I started with
 2 Rite Aid.
 3 BY MR. SIMMER:
 4 Q. Did this program change
 5 while you were at Rite Aid?
 6 A. I -- I don't think the
 7 program changed. The -- the only thing
 8 that could have potentially changed would
 9 have been the -- the thresholds.
 10 Q. Do you see under this, "The
 11 person who picks a controlled drug order
 12 is responsible for alerting the
 13 supervisor on duty of unusually high
 14 order quantities."
 15 Do you see that?
 16 A. Yes, sir.
 17 Q. And I understand that what
 18 this is, is basically a description of
 19 what's in this above average order
 20 monitoring program, correct?
 21 MS. McENROE: Objection to
 22 form.
 23 THE WITNESS: Yes, sir.
 24 BY MR. SIMMER:

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1 Q. Okay. Now just to clarify
 2 for the record. Was there another
 3 program in place to identify suspicious
 4 orders?
 5 MS. McENROE: Objection to
 6 form.
 7 THE WITNESS: I don't
 8 recall.
 9 BY MR. SIMMER:
 10 Q. So in terms of what we're
 11 talking about here, this just identifies
 12 an unusually high order; is that right?
 13 MS. McENROE: Objection to
 14 form.
 15 THE WITNESS: That's
 16 correct.
 17 BY MR. SIMMER:
 18 Q. So when we talked earlier,
 19 you said that the -- the -- those who
 20 were doing the order picks, they would
 21 use their judgment to identify if there
 22 was a suspicious order, there wasn't a
 23 program in place, except for this program
 24 identifying unusually high orders, am I

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1 right?
 2 MS. McENROE: Objection to
 3 form.
 4 THE WITNESS: I would
 5 disagree with that. Because if --
 6 if that were true, then the
 7 excessive order monitoring logs
 8 that they did have would have only
 9 been based off thresholds, they
 10 wouldn't be based off just -- you
 11 know, they -- they would have --
 12 they'd have other information
 13 other than anything that was
 14 higher.
 15 Because the document is
 16 talking about if Pick-to-Light
 17 indicates quantities greater than
 18 50 or 10 or 5, that the picks
 19 automatically stopped. Because
 20 of, as we were talking about
 21 earlier with using their judgment,
 22 there were oftentimes that the
 23 pick was stopped if they
 24 identified 7 that just didn't seem

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1 right.
2 BY MR. SIMMER:
3 Q. But the program itself --
4 we're looking at this document. The
5 program itself only asked those doing the
6 picking to identify unusually high
7 orders, right?
8 MS. McENROE: Objection to
9 form.
10 THE WITNESS: That's what
11 this document says.
12 BY MR. SIMMER:
13 Q. And I asked you a moment
14 ago, and I just want to reiterate. There
15 was no written policy for anything to
16 identify suspicious orders, was there?
17 MS. McENROE: Objection.
18 THE WITNESS: There were
19 plenty of other written policies
20 that superseded or in conjunction
21 with this. So there are other
22 policies within Rite Aid that do
23 address suspicious orders.
24 BY MR. SIMMER:

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1 Q. A moment ago I asked you
2 this question: "Now just to clarify for
3 the record, was there another program in
4 place to identify suspicious orders?"
5 Your answer, "I don't
6 recall."
7 Which is it? Was there
8 other programs to identify suspicious
9 orders or not?
10 MS. McENROE: Objection to
11 form.
12 BY MR. SIMMER:
13 Q. Because your -- your answer
14 you just gave contradicts that.
15 A. My -- the answer I just gave
16 was talking about a policy.
17 So was there a process?
18 Again, the excessive order monitoring,
19 above average monitoring, suspicious
20 order monitoring, you know, in my mind
21 that's how you -- that's how you would
22 identify any of these.
23 Q. But there was no written
24 policy, am I right, to identify

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1 suspicious orders?
2 MS. McENROE: Objection to
3 form.
4 THE WITNESS: There is a
5 written policy.
6 This is a training document.
7 BY MR. SIMMER:
8 Q. Was there any written
9 training document, whatever you want to
10 call it, to identify suspicious orders?
11 MS. McENROE: Objection to
12 form.
13 THE WITNESS: That I do not
14 recall.
15 BY MR. SIMMER:
16 Q. Look at the -- I'll direct
17 your attention to the second paragraph,
18 please.

19 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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1 [REDACTED]
2 I just want to understand
3 what that second sentence actually means.
4 Do you see where -- what I'm
5 talking about? [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 MS. McENROE: Objection to
9 form.
10 BY MR. SIMMER:
11 Q. Can you tell me what that
12 means?
13 A. I see -- I see the sentence,
14 but I did not create this document so I
15 don't necessarily know what the intent
16 is.
17 Q. Who would we have to talk to
18 in order to understand the intent of
19 this?
20 A. If -- if I'm not mistaken, I
21 think Marian Wood would have created
22 these documents.
23 Q. And what department she --
24 did she work?

<p style="text-align: right;">Page 230</p> <p>1 A. She was the pharmacy 2 department manager and DEA coordinator 3 over -- over my tenure. She held several 4 different roles. 5 Q. So you sent this information 6 on to Mr. Hensley, right? 7 A. I forwarded the e-mails, 8 correct. 9 Q. And did you explain to him 10 what this particular sentence meant? 11 A. That I do not recall. 12 Q. But sitting here today, your 13 testimony is that you didn't even know 14 what that sentence means, right? 15 A. I don't typically read the 16 training documents that the DCs used 17 internally. That's not something I ever 18 got involved with. 19 Q. So you just sent these 20 materials on, you didn't -- you don't 21 even remember having read them? 22 MS. McENROE: Objection to 23 form. 24 THE WITNESS: I don't</p>	<p style="text-align: right;">Page 232</p> <p>1 was my understanding. 2 BY MR. SIMMER: 3 Q. So it goes on to say, "They 4 have been preapproved for 75 for a tab 5 count of 100 and 500, and 25 for a tab 6 count of 1,000." 7 So that's a much larger 8 threshold than any other approved 9 threshold for any other pharmacy that 10 Rite Aid owned, correct? 11 A. Correct. 12 Q. Do you know how this 13 threshold was arrived at for 14 DrugStore.com? 15 A. I do not. That would be a 16 question for Janet Hart. 17 Q. In -- in the audit 18 procedures that we looked at for your CSA 19 team that you developed, was there any 20 kind of audit undertaken to audit the 21 prescriptions that came in through 22 DrugStore.com? 23 MS. McENROE: Objection to 24 form.</p>
<p style="text-align: right;">Page 231</p> <p>1 recall. 2 BY MR. SIMMER: 3 Q. Look at the second page if 4 you would. Just directing your attention 5 to the top there. 6 With the exceptions of Store 7 Number 777. What is Store Number 777? 8 A. They were a -- if my memory 9 serves correctly, they were an internet 10 company that Rite Aid acquired prior to 11 my tenure. 12 Q. DrugStore.com? 13 A. DrugStore.com, correct. 14 Q. And why do they have an 15 exception? 16 A. They have a lot more volume 17 than a standalone store. 18 Q. So do the -- the thresholds 19 just not apply to them? 20 MS. McENROE: Objection to 21 form. 22 THE WITNESS: Thresholds 23 were done the same for them as 24 they were for every other store,</p>	<p style="text-align: right;">Page 233</p> <p>1 THE WITNESS: Not that I'm 2 aware of, no. 3 BY MR. SIMMER: 4 Q. So the Woodland and Perryman 5 distribution centers were simply not 6 audited for what was going on at -- at 7 DrugStore.com, right? 8 MS. McENROE: Objection to 9 form. 10 THE WITNESS: DrugStore.com 11 would have been no more than just 12 another store in Perryman's 13 distribution network. 14 BY MR. SIMMER: 15 Q. But it got no special 16 attention on your audit checklist that we 17 just talked about? 18 A. It would be treated like any 19 other store, correct. 20 Q. Can I direct your attention 21 to the third page. Do you see where it 22 says, "I have read and understand the 23 above order monitoring program"? 24 A. I do.</p>

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1 Q. And then there's an
2 expectation that a person would print
3 their name, sign it, and date it, right?
4 A. That's correct.
5 Q. And this would be an
6 obligation for everybody who was an order
7 picker at either Perryman or Woodland,
8 right?
9 MS. McENROE: Objection to
10 form.
11 THE WITNESS: This is
12 specific to Perryman, and it's an
13 internal training. So I would say
14 for Perryman for sure.
15 BY MR. SIMMER:
16 Q. And where are these forms
17 housed? Where are they retained after
18 someone signs them?
19 MS. McENROE: Objection to
20 form.
21 THE WITNESS: Again,
22 question for the pharmacy
23 department manager there. This
24 wasn't something that I had

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1 oversight over.
2 BY MR. SIMMER:
3 Q. And you think that is Marian
4 Wood is the person we would have to talk
5 to about that?
6 A. That would be a good
7 resource, correct.
8 Q. And so when the person is --
9 signs this and says they understand that,
10 that includes that second sentence in the
11 second paragraph that you don't
12 understand what it means, right?
13 MS. McENROE: Objection to
14 form.
15 THE WITNESS: Correct.
16 (Document marked for
17 identification as Exhibit Rite Aid
18 Mitchell-10.)
19 BY MR. SIMMER:
20 Q. I'll hand you what we've
21 marked as Mitchell Exhibit 10.
22 MS. McENROE: Is it just one
23 page or is it two? They're not
24 stapled, but these two are

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1 together? I just want to make
2 sure I'm clear on it.
3 MS. KEARNEY: Do you want a
4 stapler?
5 MS. McENROE: Sure.
6 BY MR. SIMMER:
7 Q. I'll identify for the record
8 a document entitled "Drug Diversion
9 Training." Bates range
10 Rite_Aid_OMDL_0016230 to 16231. Take a
11 moment to review that.
12 A. Okay.
13 Q. Have you seen this document
14 before?
15 A. I have.
16 Q. And did you have a hand in
17 preparing this document?
18 A. I did not.
19 Q. Do you know who prepared it?
20 A. Again, I would think Marian
21 Wood.
22 Q. And why do you think that?
23 A. Because she was the pharmacy
24 department manager and at one time the

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1 DEA coordinator and prepared all the
2 training there internally for Perryman
3 specific to controlled substances.
4 Q. Okay. And what's your
5 understanding of what this document's
6 purpose was?
7 A. To make associates aware
8 that have any contact in the controlled
9 substance cage with what DEA's
10 expectations are as far as reporting
11 diversion if they see it, and of course
12 the accountability that goes along with
13 it.
14 Q. As it's used here, what kind
15 of diversion are we talking about?
16 MS. McENROE: Objection to
17 form.
18 THE WITNESS: Again, any
19 diversion, whether that include
20 theft or inadvertently moving
21 product from a location to a
22 location that it shouldn't belong
23 to. Anything should be reported
24 that's diverting it out of its

<p style="text-align: right;">Page 238</p> <p>1 normal intended chain. 2 BY MR. SIMMER: 3 Q. Look at the second 4 paragraph. And there's -- it's in 5 quotes. The fact that it's in quotes, do 6 you have any idea why it's in quotes? 7 A. The entire second paragraph? 8 Q. Not the entire thing. But I 9 think the first three sentences are -- is 10 quoted here. 11 A. Well, I think it's important 12 that the associates know that, you know, 13 controlled substances being put in the 14 wrong hands are not a good thing for the 15 public. 16 Q. I'm sorry, that wasn't a 17 great question. I'm just trying to 18 understand the importance of it having 19 quotes around it. 20 Do you have any idea about 21 why it's quoted? 22 A. No, I do not. No. 23 Q. Okay. 24 A. Sorry.</p>	<p style="text-align: right;">Page 240</p> <p>1 then. This is actually someone who's 2 stealing from Rite Aid, right? 3 MS. McENROE: Objection to 4 form. 5 THE WITNESS: I would agree. 6 BY MR. SIMMER: 7 Q. Okay. Let's look at the 8 second sentence. "It is, therefore, the 9 position of the DEA that an employee who 10 has knowledge of drug diversion from 11 their employer by a fellow employee has 12 an obligation to report such information 13 to a responsible security official." 14 Do you see that? 15 A. Yes, sir. 16 Q. And it says it's the 17 position of the DEA. 18 Do you see that? 19 A. I do. 20 Q. Do you have any 21 understanding where this came from when 22 it says it's the position of the DEA? 23 A. I do not. 24 Q. Okay. And what they're</p>
<p style="text-align: right;">Page 239</p> <p>1 Q. Let me direct your attention 2 to the first sentence. "Reports of drug 3 diversion by fellow employees are not 4 only a necessary part of an overall 5 employee security program but also serve 6 the public interest at large." 7 So what's being talked about 8 there is drug diversion by fellow 9 employees. 10 Am I right what they are 11 talking about is people who were working 12 in the distribution center itself, they 13 are involved in drug diversion, right? 14 MS. McENROE: Objection to 15 form. 16 THE WITNESS: That's not how 17 I read this. 18 BY MR. SIMMER: 19 Q. How do you read that then? 20 A. I read this as -- I 21 interpreted this more as drug diversion 22 within the four walls of the controlled 23 substance cage. 24 Q. I think we're in agreement</p>	<p style="text-align: right;">Page 241</p> <p>1 talking about is diversion from their 2 employer. I think you would agree with 3 me that's theft from -- from Rite Aid by 4 someone who is working in the 5 distribution center, right? 6 MS. McENROE: Objection to 7 form. 8 THE WITNESS: I would agree. 9 BY MR. SIMMER: 10 Q. Okay. And reading on, it 11 says, "The employer shall treat such 12 information as confidential and treat" -- 13 "and shall take all reasonable steps to 14 protect the confidentiality of the 15 information and the identity of the 16 employee furnishing information." 17 Do you see that? 18 A. Yes, sir. 19 Q. So what this is talking 20 about on drug diversion training is 21 simply making those individuals aware 22 that if you're stealing from your 23 employer, that could be deemed to be drug 24 diversion, right?</p>

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1 A. That is correct.
2 Q. And if you just look -- take
3 a look at the second page of this
4 exhibit. There's a place -- and it's
5 identical verbiage, it appears to be.
6 But there's a place to date and put your
7 name and then a signature.
8 A. Yes, sir.
9 Q. And what's the intent here,
10 if you know?
11 A. It appears to be a training
12 document that, again, Marian would have
13 used to train the pharmacy associates
14 that work in the controlled drug cage.
15 Q. And getting the people to
16 date and put their name and signature on
17 it, what does that accomplish?
18 A. It's acknowledging that she
19 has spent the time with them to educate
20 them on the expectations.
21 Q. And do you know where these
22 forms are actually kept for each
23 individual employee?
24 A. I do not, sir.

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1 (Document marked for
2 identification as Exhibit Rite Aid
3 Mitchell-11.)
4 BY MR. SIMMER:
5 Q. I'll hand you what we've
6 marked as Exhibit 11. I'll identify it
7 for the record as an e-mail with an
8 attachment that was, I guess produced
9 natively. I'll identify it for the
10 record Rite_Aid_OMDL_0013106 through
11 0013107.
12 And then there was a
13 spreadsheet attached that has the same
14 Bates number, 13107. Take a moment and
15 look at that.
16 So there's a cover e-mail
17 from you to Marian Wood. Excuse me.
18 Strike that.
19 There's a cover e-mail from
20 Marian Wood to you.
21 Do you see that?
22 A. Yes, sir.
23 Q. And the date is May 3rd,
24 2011.

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1 Do you see that?
2 A. Yes, sir.
3 Q. And the subject line is
4 "Threshold Log."
5 Do you see that?
6 A. Yes, I do.
7 Q. What is a threshold log?
8 A. It's the log that they keep
9 in Perryman that identifies any excessive
10 orders and/or suspicious orders.
11 Q. And I think you talked about
12 this earlier, but let's clarify. So I
13 think you said as the order picker
14 identified an order that was over the
15 threshold, they would log it, right?
16 A. That would be correct.
17 Q. And so then, somebody,
18 generally, not every instance you said,
19 but generally someone would call the
20 pharmacy and find out what was the
21 explanation for the order being above the
22 threshold, right?
23 A. Correct.
24 Q. And in those instances where

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1 they did not call the pharmacy, why was
2 that?
3 A. That, I can't answer, other
4 than if the store was closed. Again, I
5 think we talked about during -- during
6 night shift. Pharmacies typically close
7 at 9:00 p.m., so if nightshift is picking
8 at 1:00 a.m., there's nobody to call.
9 Q. Okay. Can I direct your
10 attention to the first page of the
11 threshold log?
12 And -- and I think you said
13 before too, this information is actually
14 retained by the distribution center so
15 that when the FDA -- excuse me, strike
16 that. When the DEA came in, they would
17 be able to produce this log and show the
18 DEA what had been done with any orders
19 that were over the threshold, right?
20 MS. McENROE: Objection to
21 form.
22 THE WITNESS: Any excessive
23 orders, yes, sir.
24 BY MR. SIMMER:

<p style="text-align: right;">Page 246</p> <p>1 Q. Simply those -- those are 2 the orders that are over the threshold, 3 right? 4 MS. McENROE: Objection to 5 form. 6 THE WITNESS: And including 7 any order. It doesn't have to be 8 a threshold order. Excessive 9 could be less than the threshold. 10 BY MR. SIMMER: 11 Q. Okay. Just what they deem 12 to be excessive for whatever reason? 13 A. Correct. 14 Q. What are some of the reasons 15 beyond being over the threshold that 16 would be an excessive order? 17 A. Mis-keying an order, would 18 be one that comes to my mind pretty 19 quickly. 20 Q. So just going across the top 21 of that first page. It has a date, that 22 would be the date that the order came in 23 in the first place; is that right? 24 A. Yes, sir.</p>	<p style="text-align: right;">Page 248</p> <p>1 the distribution center? 2 MS. McENROE: Objection to 3 form. 4 THE WITNESS: The item 5 number itself, sir? 6 BY MR. SIMMER: 7 Q. Yes. 8 A. It's -- it's the product. 9 So I would have to look it up in the 10 system to see what 89283 even was. 11 Q. So that would reflect what, 12 a product and a package size and a 13 dosage? 14 A. Yes, sir. 15 Q. The quantity ordered, 16 that -- do I have it right that that's 17 the amount that the retail pharmacy 18 actually ordered? 19 A. Correct. 20 Q. The allowable quantity. 21 What is that column? 22 A. That is the -- and that's 23 probably a bad choice of words, the 24 allowable quantity rather than shipped</p>
<p style="text-align: right;">Page 247</p> <p>1 Q. And then there's a store. 2 That's the Rite Aid pharmacy. 3 A. Correct. 4 Q. And then each pharmacy has 5 its own number, right? 6 A. Yes, sir. 7 Q. And the item number. What 8 is that? 9 A. The item number for the 10 particular SKU or medication that was 11 ordered. 12 Q. Now, the first page doesn't 13 have this, but later pages have a 14 description column. Is there any reason 15 that your -- you can help us with that 16 the first page does not have that 17 description on it? 18 A. Because specifically I don't 19 know what Item 89283 is. So if you have 20 a description then it makes it much 21 easier for folks to understand what it is 22 that was ordered. 23 Q. Okay. So what does that 24 numbering convention mean to the -- to</p>	<p style="text-align: right;">Page 249</p> <p>1 quantity. But that's what the order was 2 cut back to prior to shipping. 3 Q. If it was indeed cut back? 4 A. Correct. 5 Q. Because some of these show 6 an exception was made, right? 7 A. There could be. 8 Q. Okay. And then the last 9 column, it says reason. Do you see that? 10 A. Yes, sir. 11 Q. Let me just look at a few of 12 these. On this first page a number of 13 them just say system. Any idea what that 14 is? 15 A. I don't know for sure. 16 My -- my assumption would be 17 auto-replenishment. 18 Q. Okay. Let me pick a few 19 more of these and see if you can help us 20 understand what they are. 21 Look at Page 7 if you would 22 please. That's -- same Bates number, 23 so -- 24 A. Yes, sir.</p>

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1 Q. Just look at that first line
2 on there. You see that the date was
3 January 3, 2011?
4 A. Yes, sir.
5 Q. And the Store Number 4309,
6 do you see that?
7 A. Yes, sir.
8 Q. And then there is an item
9 number, and the description is CA3
10 hydrocodone AP 7.5, 750 milligrams,
11 tab 500. Do you see that?
12 A. Yes, sir.
13 Q. And the amount ordered -- or
14 quantity ordered was [REDACTED]. And then there
15 was an allowable quantity of [REDACTED].
16 And do you see that the
17 reason, pharmacy manager Hiren usually
18 needs more than ordered?
19 A. Yes, sir.
20 Q. What is the reason -- help
21 us to understand what that means.
22 A. He's basically telling the
23 distribution center that the reason that
24 he's ordering more is that he needs more.

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1 Q. Look at the third item on
2 here, Diazepam 20-milligram rectal gel 2
3 kit. Do you see that?
4 A. Yes, sir.
5 Q. Quantity ordered, [REDACTED]. Do
6 you see that?
7 A. Mm-hmm.
8 Q. And the allowable quantity
9 was [REDACTED]?
10 A. Yes, sir.
11 Q. And it says, "SW PIC Grey,
12 wanted them all, appeared excessive?"
13 What's being said there?
14 A. The pharmacy spoke with
15 Pharmacist-in-Charge Grey. And whoever
16 Grey is again communicated to them that
17 they needed them all.
18 Q. So when they say they wanted
19 them all, basically they have
20 prescriptions -- prescription demand
21 business, if you will, to justify this
22 entire order; is that correct?
23 A. Correct. So although the
24 distribution center -- although it was

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1 less than the threshold, the distribution
2 center still identified that as excessive
3 based on their normal orders.
4 Q. Look at the next page if you
5 would. I just am picking a few of things
6 to understand what's being said.
7 So the fifth item on here,
8 this is from January 21, 2011.
9 Pharmacy 4964. Item Number 49061.
10 Plan B One-step 1.5 tab one count. Do
11 you see that?
12 A. Yes, sir.
13 Q. And the order was for [REDACTED].
14 Do you see that?
15 A. I do.
16 Q. And the -- the shipped
17 amount was [REDACTED]. Do you see that?
18 A. I do.
19 Q. And then it says over in the
20 explanation, "auto-replenishment."
21 A. Yes, sir.
22 Q. So what is that indicating?
23 A. That auto-replenishment is
24 the one that generated the suggested

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1 order for [REDACTED]. And again, if I'm not
2 mistaken, this is a -- I don't even think
3 this is a controlled substance. I think
4 this is a pseudoephedrine drug. And we
5 had also got permission from DEA to store
6 in the controlled drug cage just because
7 of all the diversion with pseudoephedrine
8 products.
9 So again, I think it's just
10 showing the due diligence that the DC has
11 of -- of making sure that those
12 particular items are also controlled, not
13 as a controlled substance, but they have
14 more security around them. And that we
15 would only ship -- we had a threshold for
16 pseudoephedrine items of [REDACTED] units per --
17 per shipment.
18 Q. Okay. Look later on that
19 same page. I think this -- the seventh
20 item from the bottom. I'll read across.
21 January 26, 2011. Pharmacy 4667. Do you
22 see the same line?
23 A. Yes, sir.
24 Q. It was for Item 49019.

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1 Q-TAPP elixir, 118 milliliters.
2 Do you see that? That
3 indicates it's a liquid, right?
4 A. Yes, sir.
5 Q. When it's measured in
6 milliliters, right?
7 A. Yes. Mm-hmm.
8 Q. Okay. It says it was an
9 account -- or amount ordered, [REDACTED] Do you
10 see that?
11 A. I do.
12 Q. And the amount shipped was
13 [REDACTED]?
14 A. Mm-hmm.
15 Q. And over in the explanation
16 column, "Called store at 1435. No
17 answer. Appeared excessive."
18 What is being said there?
19 A. That they tried to reach out
20 to the store to identify whether or not
21 they truly needed [REDACTED]. And again, if they
22 didn't talk to anyone and the order had
23 to ship, and it's still within the
24 threshold, because that -- that item

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1 would have been [REDACTED] as the max, although
2 it appeared excessive it still was within
3 the threshold, so it looks like they
4 shipped [REDACTED].
5 Q. So in that instance they
6 didn't even speak to anybody at the
7 pharmacy at all, did they?
8 A. It appears that way,
9 correct.
10 Q. They shipped it anyway,
11 right?
12 A. Correct.
13 Q. Look at the fourth from the
14 bottom. January 26, 2011. Store 11577.
15 Item 87445. Do you see that?
16 A. Yes, sir.
17 Q. And C3A. What is a C3A?
18 A. C -- the A is how an ARCOS
19 reportable item is classified on these
20 documents.
21 Q. And that would be a
22 controlled substances?
23 A. Yeah -- oh yes, sir.
24 Q. When it says Hydromet

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1 syringe, does S-Y-R mean syringe?
2 A. I believe it's syrup.
3 Q. Syrup, okay.
4 5 milligrams/5 milliliters, 160 -- excuse
5 me, 16-ounce; is that right?
6 A. Mm-hmm, yes, sir.
7 Q. And it says the ordered
8 amount was [REDACTED]. Do you see that?
9 A. Yes, sir.
10 Q. And the shipped amount was
11 [REDACTED]?
12 And then over the -- or the
13 explanation, SW tech Marianne. And I'll
14 let you tell us what else is being said
15 there.
16 A. "Spoke with the pharmacy
17 tech Marianne," and she wanted -- again
18 she basically communicated back to the DC
19 that she wanted them all.
20 Q. So -- and there are a number
21 of instances. I can go through more of
22 them to show that. But what -- when this
23 conversation happened, the person, either
24 the pharmacist or whoever was spoken to

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1 says, "I want them all."
2 Is that a sufficient
3 explanation in order to ship what could
4 have been an excessive order?
5 MS. McENROE: Objection to
6 form.
7 THE WITNESS: They -- in my
8 opinion, they would have known
9 what they needed to fulfil -- fill
10 scripts. Again, I wouldn't have
11 known that.
12 If I'm the one -- if I'm the
13 person I guess in Perryman
14 speaking with Marianne, again
15 she's going to know whether she
16 needs these items to fill scripts
17 or not.
18 So being that it's within
19 the threshold and she is the one
20 running the store or working at
21 the store, then I -- I would --
22 yeah. I would make the same
23 determination that it's okay to
24 ship.

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1 BY MR. SIMMER:

2 Q. Because the person at the
3 pharmacy said I want them all, that's all
4 that's required, right?

5 MS. McENROE: Objection to
6 form.

7 THE WITNESS: Based off what
8 you and I both see as the
9 reasoning, yes.

10 BY MR. SIMMER:

11 Q. Again, what they are looking
12 for is need. I think you've talked about
13 that earlier. If there appears to be a
14 business need, that's sufficient in terms
15 of -- of shipping this order, even though
16 it's over whatever excessive order log
17 that's on here, right?

18 MS. McENROE: Objection to
19 form.

20 THE WITNESS: Well, it's --
21 it's still within the threshold,
22 but again, based on their normal
23 ordering, whoever identified this
24 did identify it as excessive.

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1 BY MR. SIMMER:

2 Q. But when they spoke to the
3 person at the pharmacy, said I need them
4 all, right?

5 A. That's correct.

6 Q. And that's sufficient in
7 order to -- to ship this order, right?

8 MS. McENROE: Objection to
9 form. Asked and answered.

10 THE WITNESS: It -- it would
11 be, yes.

12 BY MR. SIMMER:

13 Q. Nothing further required
14 than saying I want them all, right?

15 A. That would be correct.

16 MR. SIMMER: Can we take a
17 short break?

18 THE VIDEOGRAPHER: The time
19 is now 2:38 p.m. We're going off
20 the record.

21 (Short break.)

22 THE VIDEOGRAPHER: The time
23 is now 2:59 p.m. We are back on
24 the record.

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1 BY MR. SIMMER:

2 Q. Sir, just a couple more
3 questions about that last exhibit that we
4 were looking at a moment ago.

5 MS. McENROE: That's
6 Exhibit 11?

7 MR. SIMMER: Exhibit 11,
8 yes.

9 BY MR. SIMMER:

10 Q. This was a record that was
11 created reflecting the fact that all of
12 these shipments had been shipped, right?

13 MS. McENROE: Objection to
14 form.

15 THE WITNESS: Yes, sir.

16 BY MR. SIMMER:

17 Q. And you got these reports
18 monthly; is that correct?

19 A. I honestly do not recall how
20 frequently I got them.

21 Q. But you received them
22 yourself, right?

23 A. I did.

24 Q. Did you look at them when

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1 you received them?

2 A. Yes, I did.

3 Q. Did you ever see any order
4 that was flagged as being a suspicious
5 order and that was not shipped at all and
6 then reported to the DEA?

7 MS. McENROE: Objection to
8 form.

9 THE WITNESS: I do not
10 recall ever seeing that.

11 BY MR. SIMMER:

12 Q. Do you recall ever, as a
13 part of this threshold log process, the
14 identification of any order that was
15 reported to the DEA?

16 MS. McENROE: Objection to
17 form.

18 THE WITNESS: I do not.

19 BY MR. SIMMER:

20 Q. And just to clarify too,
21 what we're seeing in terms of the
22 records -- we went through several of
23 them here -- that's the entire record to
24 reflect what happened in terms of due

<p style="text-align: right;">Page 262</p> <p>1 diligence for these orders that were 2 potentially excessive, right? 3 MS. McENROE: Objection to 4 form. 5 THE WITNESS: I -- I would 6 assume so. 7 BY MR. SIMMER: 8 Q. Okay. So you assume so. 9 You're saying that you don't know? Is 10 that what you're saying? 11 A. Again, I don't -- I never 12 worked at the distribution center, so I 13 am assuming this is all they did prior to 14 shipping the drugs. 15 Q. I'm just trying to clarify. 16 Is there any other due diligence record 17 that was created about these orders other 18 than these lines that are reflected on 19 this threshold log? 20 MS. McENROE: Objection to 21 form. Asked and answered. 22 THE WITNESS: Not that I'm 23 aware of. 24 BY MR. SIMMER:</p>	<p style="text-align: right;">Page 264</p> <p>1 wholesale distributors to follow. 2 BY MR. SIMMER: 3 Q. So -- but there's no written 4 report to reflect those statements, 5 right? 6 A. That's correct. They only 7 issue a report if there's a finding. 8 (Document marked for 9 identification as Exhibit Rite Aid 10 Mitchell-12.) 11 BY MR. SIMMER: 12 Q. I'm going to hand you 13 something that we pulled out of your 14 custodial file. It's an excerpt of a 15 much longer document. And we just pulled 16 two pages. I want to ask you about it. 17 And I'll set it up in terms of, it's a -- 18 it's a document, I think it's about 100 19 pages long, that we found in your 20 materials. I'll identify these two pages 21 as excerpts from that. 22 First page is 23 Rite_Aid_OMDL_0020703, and the second 24 page is 0020727.</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. Sir, you testified earlier 2 that the DEA had commented on just how 3 good and solid your program was, right? 4 A. Yes, sir. 5 Q. When did they tell you that? 6 A. 2005, 2009. And that would 7 be the Baltimore office that came in to 8 do an inspection of Perryman. 9 Q. And who was that? 10 A. I do not recall their names. 11 Q. Was it included in the 12 report in writing? 13 MS. McENROE: Objection to 14 form. 15 THE WITNESS: The DEA did 16 not issue a report because there 17 were no findings. They did a 18 recap with the entire pharmacy 19 staff, the general manager of the 20 building, and myself complimenting 21 on us -- complimenting us and 22 telling us -- quite frankly, their 23 exact words were, you should be 24 the gold standard for other</p>	<p style="text-align: right;">Page 265</p> <p>1 You mentioned something 2 earlier that you called the blue book? 3 A. Yes, sir. 4 Q. Which I think was a binder 5 of the standard operating procedures the 6 company had? 7 MS. McENROE: Objection to 8 form. 9 THE WITNESS: Yes, sir. 10 BY MR. SIMMER: 11 Q. The first page here on this 12 document where it says Distribution 13 Center Customer Support Center 14 Prescription Drug SOPs Regulatory 15 Guidelines, would that be what you're 16 calling the blue book? 17 A. No, sir. 18 Q. It's different? 19 A. Correct. 20 Q. Okay. What is -- what is 21 this one called? 22 A. Customer Support Center 23 Prescription Drug SOPs. 24 Q. Does -- it doesn't have a</p>

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<p>1 shorthand name like -- 2 A. No, it doesn't. 3 Q. -- the blue -- okay. 4 A. I'm not being sarcastic. It 5 was -- that's just what it's called. 6 Q. Okay. And sometimes the 7 questions yield what was an obvious 8 answer and I apologize for that. 9 And the blue book did not 10 include SOPs? 11 MS. McENROE: Objection to 12 form. 13 THE WITNESS: Disagree. The 14 blue book was SOPs. 15 BY MR. SIMMER: 16 Q. So this one is a different 17 group of SOPs? 18 A. This is. 19 Q. Okay. And -- and tell us 20 what the difference between the blue book 21 and this one would be? 22 A. The -- the blue book was in 23 place when I first started with the 24 company. And if I'm not mistaken, it</p>	<p>1 and we can blow that up and put it on -- 2 on the screen. 3 Do you see where it says, 4 "Therefore, the following DEA regulatory 5 guidelines were prepared in response to a 6 need for a single source of current 7 information for Rite Aid regarding Drug 8 Enforcement Administration (DEA) policies 9 and the requirements of the comprehensive 10 Drug Abuse Prevention Act, Public Law 11 91-5132, otherwise known as the 12 Controlled Substances Act of 1970 or the 13 CSA and the implementing regulations." 14 Do you see that? 15 A. Yes, sir. 16 Q. Do you know who prepared 17 this document for the company? 18 A. I'm pretty sure it was Ron 19 Buzzeo's group. 20 Q. It wasn't prepared by 21 anybody at Rite Aid? 22 A. No, sir. 23 Q. And why are you saying 24 you're pretty sure it was Ron Buzzeo's</p>
Page 267	Page 269
<p>1 originated maybe like in 1993. 2 This was more specific, and 3 I think more detailed than the blue book, 4 so this is what I had the pharmacy DCs 5 use to monitor their day-to-day 6 activities, again to ensure compliance 7 with DEA regulations. 8 Q. Was this on top of the blue 9 book or did it replace the blue book? 10 A. It was on top of it. 11 Q. So everyone working in 12 distribution centers worked off of this 13 set of guidelines as well? 14 A. For the prescription drugs, 15 correct. Yes, sir. 16 Q. Okay. Just looking at the 17 first page, it's a summary of sort of the 18 legal terrain of the DEA regulations, 19 right? 20 MS. McENROE: Objection to 21 form. 22 BY MR. SIMMER: 23 Q. And it says, the second 24 paragraph, and I'll just read it aloud</p>	<p>1 group? 2 A. That's what I recall. 3 Q. Did you have a hand in 4 commissioning them to prepare this? 5 A. That I do not recall. 6 Q. Did the company have a 7 contract or series of contracts with 8 Buzzeo -- Buzzeo's group to do this kind 9 of work for it? 10 A. Again, a better question 11 probably for the government affairs 12 department. They are the ones that 13 typically generated the discussions with 14 Ron about auditing and what they would 15 like for him to do. 16 Q. Do you have an idea when 17 this set of guidelines was put in place? 18 A. Early in my tenure. But I 19 don't remember the exact year. 20 Q. Look at the last paragraph 21 on this page, if you would. Do you see 22 where it says, "Rite Aid is responsible 23 for ensuring compliance with DEA 24 regulatory requirements, and that</p>

<p style="text-align: right;">Page 270</p> <p>1 responsibility for compliance cannot be 2 abdicated or transferred to anyone else"? 3 A. Yes. 4 Q. And that was a true 5 statement the entire time you worked at 6 Rite Aid, wasn't it? 7 A. Yes, sir. 8 Q. Reading on. Do you see 9 where it says, "The legislative and 10 social intent of regulating controlled 11 substances and products that contain 12 List I chemicals is consistent with the 13 mission of Rite Aid in serving the public 14 good." 15 Do you see that? 16 A. Yes, sir. 17 Q. And that sentence was a true 18 statement through the entire time you 19 worked at Rite Aid as well, right? 20 A. Yes, sir. 21 Q. Let's look at the last 22 sentence. "To achieve these important 23 goals, Rite Aid supports the proper and 24 appropriate use of controlled substances</p>	<p style="text-align: right;">Page 272</p> <p>1 to here as excessive order monitoring? 2 MS. McENROE: Objection to 3 form. 4 THE WITNESS: Well again, 5 and this is what I was going to 6 say earlier, that excessive order 7 monitoring is to provide 8 monitoring for all controlled 9 substances as well as List I 10 chemicals, as you could tell with 11 the document that was provided in 12 the last attachment. And to 13 detect excessive orders and/or 14 suspicious orders. 15 BY MR. SIMMER: 16 Q. But insofar as the heading 17 here it just says excessive orders, 18 right? 19 A. The Title VI, correct. 20 Mm-hmm. 21 Q. Okay. But it's your 22 testimony now that it also is endeavored 23 to identify suspicious orders. 24 Is that what you're</p>
<p style="text-align: right;">Page 271</p> <p>1 and products that contain List I 2 chemicals for legitimate use and seeks to 3 eliminate any and all diversion of 4 controlled substances and products that 5 contain List I chemicals." 6 Do you see that? 7 A. Yes, sir, I do. 8 Q. Did I read that accurately? 9 A. Yes, sir. 10 Q. And that was a true 11 statement the entire time you worked at 12 Rite Aid as well, right? 13 A. Yes, sir. 14 Q. Could I direct your 15 attention to the next page please. 16 Do you see the heading where 17 it says, "DEA regulatory guidelines," and 18 it has Roman numeral VI, excessive order 19 monitoring? 20 A. Yes, sir. 21 Q. And what is your 22 understanding, if you could, I mean if 23 you need to refer to it or read it, by 24 all means do, but what's being referred</p>	<p style="text-align: right;">Page 273</p> <p>1 testifying? 2 A. Yes, sir. 3 Q. Okay. Let's look at the 4 procedures that are outlined below there. 5 Do you see paragraph Number 1? 6 A. Yes, sir. 7 Q. Let me read this into the 8 record. Do you see where it says, "All 9 orders containing controlled substances 10 are reviewed and verified for order 11 quantity and size to not exceed the 12 determined order history threshold. Any 13 order exceeding the threshold is 14 immediately forwarded to the department 15 manager for further investigation." 16 Do you see that? 17 A. Yes, sir. 18 Q. So this first paragraph is 19 simply identifying any -- anything over 20 the threshold, right, that's what's being 21 described here? 22 MS. McENROE: Objection to 23 form. 24 THE WITNESS: I think that</p>

<p style="text-align: right;">Page 274</p> <p>1 could be interpreted a couple 2 different ways. 3 It says the order history 4 threshold. I don't know that that 5 necessarily means the threshold 6 for specific items as much as it 7 means that as well as the order 8 history itself. 9 BY MR. SIMMER: 10 Q. So you're saying that in 11 terms of that particular pharmacy's order 12 history, not the -- not the overall 13 threshold that is applicable to -- across 14 all Rite Aid pharmacies, but that 15 particular pharmacy's order history, 16 that's what's being talked about here? 17 A. I interpret this as both. 18 That's correct. 19 Q. And what it says here is any 20 order exceeding that threshold, that 21 order history you're talking about, must 22 be immediately forwarded to the 23 department manager for further 24 investigation, right?</p>	<p style="text-align: right;">Page 276</p> <p>1 suspicious order the same as an excessive 2 order? 3 A. No, sir. 4 Q. And so how are we to 5 distinguish between an excessive order 6 and a suspicious order? 7 A. Again, I think excessive is 8 just that. Excessive is out of the 9 normal. It could be a higher quantity 10 than their -- they typically order. 11 I think suspicious, again, 12 could include the unusual size, orders 13 deviating from the days or number of 14 times per week that an order was placed, 15 which is kind of covered in the unusual 16 frequency. 17 Q. Okay. Now, let me just 18 clarify one item. In paragraph Number 1, 19 we looked at a number what deemed to be 20 excessive orders on that threshold log, 21 right? 22 A. That's correct. 23 Q. And those were ones that 24 were either over the standard generic</p>
<p style="text-align: right;">Page 275</p> <p>1 A. Yes, sir. 2 Q. And what department manager 3 are we referring this to? 4 A. This would be the local 5 distribution center pharmacy manager. 6 Q. Okay. So the procedure that 7 is outlined here, this is the pickers 8 that were identifying these potentially 9 excessive prescriptions, right? 10 A. Yes, sir. 11 Q. Excuse me. Excessive 12 orders? 13 A. Yes. 14 Q. Okay. Look at Paragraph 2. 15 "Suspicious orders include orders of 16 unusual size, orders deviating 17 substantially from a normal pattern, and 18 orders of an unusual frequency." 19 Do you see that? 20 A. Yes, sir. 21 Q. Now, this says suspicious 22 orders, right? 23 A. Yes, sir. 24 Q. So, as it's used here, is a</p>	<p style="text-align: right;">Page 277</p> <p>1 threshold that the company applied to 2 every drug or were unusual as to the 3 ordering history for that pharmacy, 4 right? 5 A. That's correct. 6 Q. And here with regard to 7 Paragraph 2, was there any separate 8 report or way of tracking suspicious 9 orders that the company identified? 10 MS. McENROE: Objection to 11 form. 12 THE WITNESS: I'm not aware 13 of any suspicious orders that were 14 ever identified. But if I were 15 the one at the distribution 16 center, I would put that on the 17 excessive log and then contact 18 government affairs as the policy 19 states to do. 20 BY MR. SIMMER: 21 Q. But you don't know of any 22 time that there were ever any suspicious 23 orders identified by the distribution 24 center and in turn reported to government</p>

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1 affairs; isn't that right?
2 MS. McENROE: Objection to
3 form.
4 THE WITNESS: That's
5 correct.
6 MS. McENROE: Asked and
7 answered.
8 BY MR. SIMMER:
9 Q. Look at Paragraph 3. Do you
10 see where it says, "A review is performed
11 to determine the legitimacy of the order.
12 Appropriate documentation of the review
13 is maintained on file."
14 Do you see that?
15 A. Yes, sir.
16 Q. So who does this review to
17 determine if the legitimacy of the order?
18 A. Government affairs and Janet
19 Hart's group.
20 Q. And what is your
21 understanding is meant by legitimacy of
22 the order?
23 A. Again, whether or not it
24 was -- it was justified. Whether there

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1 are actual scripts to support that amount
2 of distribution of a particular product.
3 Q. So the legitimacy -- if --
4 if the investigation was -- strike that.
5 If the government affairs
6 was investigating this and found that the
7 order was illegitimate, would there be a
8 record of that someplace?
9 A. That I do not know.
10 Q. Do you know of any time that
11 the government affairs ever deemed an
12 order to be illegitimate?
13 A. Not that I'm aware of.
14 Q. When it says appropriate
15 documentation of the review is maintained
16 on file, do you know where that's
17 maintained?
18 A. The distribution center
19 would have it on file in case DEA wanted
20 to see supporting documentation. But
21 I -- again, the DC would have to answer
22 where they kept them. I'm not aware.
23 Q. Is anything other than the
24 threshold log that we looked at a moment

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1 ago in terms of records that you're aware
2 of that the DC would have kept?
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: The only other
6 thing would be whatever documents
7 Janet Hart would have provided in
8 her research.
9 BY MR. SIMMER:
10 Q. Okay. That's not DC, but
11 that's government affairs, right?
12 A. Government affairs would
13 have done the work. The DC would have
14 kept the finished product, the document
15 to support whether or not the threshold
16 was adjusted up or down or whether she
17 gave permission to ship more than the
18 standard company threshold.
19 Q. So it's your belief that if
20 the DC was the one that would retained
21 the records, including the records that
22 were created by government affairs,
23 right?
24 A. Absolutely, yes, sir.

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1 Q. Look at Number 4. "Any
2 order which is determined to be
3 suspicious will be immediately reported
4 to the corporate office who will notify
5 the local DEA field division office of
6 the" -- excuse me -- "DEA field division
7 office of the administration."
8 Do you see that?
9 A. Yes, sir.
10 Q. I stumbled over that. But
11 you understand what that's saying here,
12 right?
13 A. Absolutely.
14 Q. Why don't you tell us.
15 A. So if any order was deemed
16 to be suspicious, that person should
17 immediately report it to Janet Hart,
18 government affairs. She in turn would
19 report that directly to the field
20 diversion office of DEA.
21 Q. And would you have been
22 copied on any of those kinds of notices
23 that would have been sent to Janet Hart
24 during your time working at the company?

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1 MS. McENROE: Objection.
2 THE WITNESS: I'm not
3 aware -- I'm not aware of any
4 notice that was ever sent to
5 Janet, so I don't know.
6 BY MR. SIMMER:
7 Q. So, so far as you know,
8 there was no such notice ever sent to her
9 of any suspicious order, right?
10 A. Not that I'm aware.
11 Q. Nor in turn that she
12 reported to the DEA as well, right?
13 A. Not that I'm aware.
14 Q. Paragraph Number 5, "If a
15 suspicious order is reported to
16 corporate, the corporate government
17 affairs will determine whether to 'ship'
18 or 'do not ship.'"
19 Do you see that?
20 A. Yes, sir.
21 Q. Are you aware of any
22 instance when corporate government
23 affairs determined do not ship?
24 A. I am not aware.

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1 Q. In fact, you are not aware
2 of any suspicious orders even being
3 reported to corporate government affairs,
4 right?
5 MS. McENROE: Objection to
6 form. Asked and answered.
7 THE WITNESS: That is
8 correct.
9 BY MR. SIMMER:
10 Q. Paragraph Number 6, "All
11 discussions, investigations and reports
12 will be maintained in the file designated
13 'suspicious orders.'"
14 Do you see that?
15 A. Yes, sir.
16 Q. Do you know if there was
17 indeed a file designated "suspicious
18 orders" that the company maintained?
19 A. I do not recall.
20 Q. You don't recall or you
21 don't believe there was one?
22 MS. McENROE: Objection to
23 form.
24 THE WITNESS: I don't

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1 recall.
2 BY MR. SIMMER:
3 Q. Because there were no
4 suspicious ever -- orders ever reported,
5 is it the fact that they simply had none
6 to put in that file?
7 MS. McENROE: Objection to
8 form.
9 THE WITNESS: I don't
10 recall.
11 BY MR. SIMMER:
12 Q. You just don't know one way
13 or the other?
14 MS. McENROE: Objection to
15 form.
16 THE WITNESS: Again, it's
17 been a long time ago. I don't
18 recall.
19 BY MR. SIMMER:
20 Q. But I think it is your
21 testimony -- I've asked you several
22 times, just to confirm -- you don't know
23 of any suspicious orders that were ever
24 reported at all, right?

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1 MS. McENROE: Objection to
2 form.
3 THE WITNESS: That is
4 correct.
5 BY MR. SIMMER:
6 Q. Besides the work that you've
7 talked about so far today that the
8 company did with Buzzeeo, did the company
9 consult with any other third-party
10 companies about its suspicious order
11 monitoring program?
12 A. I'm unaware if they did.
13 Q. Buzzeeo would be the one that
14 you're aware of that the company worked
15 with on a regular basis, right?
16 MS. McENROE: Objection to
17 form.
18 THE WITNESS: From a
19 distribution center standpoint, he
20 is the only one that I can recall
21 working with. What they did on
22 the stores and on the retail side,
23 I have no -- no knowledge of that.
24 BY MR. SIMMER:

<p style="text-align: right;">Page 286</p> <p>1 Q. And how frequently did 2 Buzzeo work with the distribution centers 3 in this consulting capacity? 4 A. As far as conducting audits, 5 probably just the first year or so. 6 Maybe year or two years of my employment. 7 Afterwards, we used him 8 very, very rarely to write SOPs and to 9 assist with the VAWD SOPs that were 10 written, I believe in 2007. But as far 11 as coming and conducting audits, it was, 12 you know, probably nothing after 2002. 13 Q. So Buzzeo never came back 14 after 2002 that you recall to audit the 15 company's suspicious order monitoring 16 program, right? 17 A. Not that I recall, correct. 18 Q. Okay. And you do recall 19 that they actually assisted in writing 20 SOPs, right? 21 A. Yes, that is correct. 22 Q. And that's with regard to 23 the Indiana VAWD procedure that you 24 talked about earlier, right?</p>	<p style="text-align: right;">Page 288</p> <p>1 acronym stands for; is that right? 2 A. That's correct. 3 Q. And then the second thing 4 they did was to help prepare SOPs that we 5 just looked at, the excerpts that we just 6 went over, right? 7 A. That's correct. 8 Q. Is there anything else that 9 Buzzeo did to assist the company in 10 looking at a suspicious order monitoring 11 program? 12 A. Not that I recall. 13 (Document marked for 14 identification as Exhibit Rite Aid 15 Mitchell-13.) 16 BY MR. SIMMER: 17 Q. I'll hand you what we marked 18 as Mitchell Exhibit Number 13. I'll 19 identify it for the record while you're 20 looking at it as an e-mail string, two 21 pages, first page of which is 22 Rite_Aid_OMDL_0020388 to 0020389. 23 Have you seen this e-mail 24 before?</p>
<p style="text-align: right;">Page 287</p> <p>1 A. Those, and these SOPs as 2 well. 3 Q. And these are separate -- 4 MS. McENROE: For the 5 record, the witness was gesturing 6 towards Exhibit 12. Just want to 7 make sure that was clear. 8 THE WITNESS: Sorry. 9 BY MR. SIMMER: 10 Q. Yes, and you were -- you 11 were pointing to the prior exhibit, those 12 SOPs that we just talked about a moment 13 ago? 14 A. Yes, sir. 15 Q. Okay. And those were two 16 separate things that Buzzeo did? 17 A. Yes, sir. 18 Q. One, they worked with the 19 certification that the company was 20 seeking to get with Indiana, right? 21 A. Correct. 22 Q. And that's the VAWD? 23 A. Yes, sir. 24 Q. We don't know what that</p>	<p style="text-align: right;">Page 289</p> <p>1 A. Yes, sir. 2 Q. When did you look at it 3 last? 4 A. I believe I saw this 5 yesterday. 6 Q. Can I direct your attention 7 to, I guess the e-mail that starts the 8 string that's dated July 27, 2009, from 9 Cegedim Dendrite Compliance Solutions? 10 A. That's right. 11 Q. Am I right that Cegedim 12 Dendrite Compliance Solutions is the same 13 as Buzzeo? 14 A. That's correct. 15 Q. And this is an invitation, 16 as I understand it, to the Seventh Annual 17 Controlled Substances Conference? 18 A. Yes, sir. 19 Q. Is that a conference that 20 you've attended before? 21 A. I've attended some of his 22 conferences in the past. That is 23 correct. 24 Q. Before this particular</p>

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1 invite right here?
 2 A. Yes, sir.
 3 Q. And your e-mail right above
 4 that from you to Rick Chapman, do you see
 5 where -- this is July 27, 2009. Do you
 6 see where you say, "Rick, would you
 7 approve me attending this conference? If
 8 so I would like to offer to the DEA
 9 coordinators and the remaining Rx
 10 buildings as well. Please let me know
 11 your thoughts. Thanks Kevin."
 12 A. Yes, sir.
 13 Q. And you're just simply
 14 asking permission to attend, right?
 15 A. Correct.
 16 Q. And you had to do that every
 17 time if you wanted to attend? You
 18 couldn't just go on your own; is that
 19 right?
 20 A. Correct.
 21 Q. And what was your intention,
 22 why you felt it was necessary to go to
 23 this conference?
 24 MS. McENROE: Objection to

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1 form to further my knowledge and
 2 to coordinate the knowledge DEA
 3 coordinators in the buildings.
 4 BY MR. SIMMER:
 5 Q. Can I direct your attention
 6 to the second page here. I just want to
 7 ask you a few questions. Do you see
 8 where it says "Register Now" and there's
 9 something that -- a little picture that
 10 apparently didn't get transferred in the
 11 document we were given. But it talks
 12 about the conference that was going to be
 13 on November 4th through 6, 2009, in the
 14 Crystal Gateway Marriott in Arlington,
 15 Virginia.
 16 Do you see that?
 17 A. Yes, sir.
 18 Q. And then there's a paragraph
 19 down below there about the things that
 20 were going to be discussed at this
 21 conference.
 22 Do you see that?
 23 A. Yes, sir.
 24 Q. Are these the typical areas

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1 that the Buzzeo conferences included?
 2 MS. McENROE: Objection to
 3 form.
 4 BY MR. SIMMER:
 5 Q. As you understand it?
 6 A. They changed from conference
 7 to conference. But any update on DEA
 8 regulations or expectations, they
 9 typically covered current events.
 10 Q. Would you be the only person
 11 from the company that would have
 12 regularly attended these conferences?
 13 MS. McENROE: Objection to
 14 form.
 15 THE WITNESS: Not
 16 necessarily.
 17 BY MR. SIMMER:
 18 Q. Who else at the company
 19 would have attended these conferences
 20 besides yourself?
 21 A. Janet Hart has attended. I
 22 think Andy Palmer has attended, DEA
 23 pharmacy. Again, this is distribution
 24 I'm speaking of. Pharmacy department

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1 managers have attended. DEA coordinators
 2 have attended.
 3 Q. And did the company try to
 4 always have somebody at these
 5 conferences?
 6 MS. McENROE: Objection to
 7 form.
 8 THE WITNESS: No, sir.
 9 BY MR. SIMMER:
 10 Q. So were there times when no
 11 one attended?
 12 A. That would be correct, sir.
 13 Q. And why would no one attend
 14 a conference if it was something that
 15 conveyed this kind of current information
 16 to you?
 17 MS. McENROE: Objection to
 18 form.
 19 THE WITNESS: That, I can't
 20 answer.
 21 BY MR. SIMMER:
 22 Q. Were there instances where
 23 you asked permission to attend that you
 24 were not given permission to attend?

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1 A. Not that I recall.
2 Q. So every time you asked, you
3 were generally given permission to
4 attend?
5 A. I believe that to be true.
6 Q. Do you know whether you
7 attended this particular one in
8 November 2009?
9 A. I believe I did.
10 (Document marked for
11 identification as Exhibit Rite Aid
12 Mitchell-14.)
13 BY MR. SIMMER:
14 Q. I'll hand you what we've
15 marked as Mitchell Exhibit 14.
16 I'll identify it for the
17 record as an e-mail string, two pages --
18 actually strike that. Three pages. The
19 first of which is Rite_Aid_OMDL_0050628
20 through 50630.
21 Take a moment to review
22 that.
23 A. Okay.
24 Q. Let me just ask you first

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1 about the e-mail on the first page that
2 starts the string from Kimberly Birklin.
3 Who is that?
4 A. Kim was the DEA coordinator
5 in Liverpool, New York.
6 Q. And do you know what her
7 responsibilities were as DEA coordinator?
8 A. To basically ensure
9 compliance with all DEA regulations for
10 the Liverpool DC.
11 Q. Okay. And so her e-mail to
12 you dated April 11, 2011. Do you see
13 where she says under the subject,
14 suspicious order monitoring, do you see
15 that?
16 A. Yes, sir.
17 Q. And in the body of the
18 e-mail, she says, "Kevin, just reviewing
19 SOM procedures for our building. Do you
20 know if we are moving in this direction
21 for our order management system?"
22 And then there's a link to a
23 Cegedim page attached to this.
24 A. Yes, sir.

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1 Q. Do you remember having seen
2 this -- this e-mail string before?
3 A. Yes, sir, I have.
4 Q. When did you last see it?
5 A. I believe yesterday.
6 Q. Okay. Directing your
7 attention to the second page. It's --
8 it's cut off, but we went back and I
9 think have identified the actual page
10 here.
11 Can I show that to you?
12 A. Yes, sir.
13 (Document marked for
14 identification as Exhibit Rite Aid
15 Mitchell-15.)
16 BY MR. SIMMER:
17 Q. We just wanted to make sure,
18 as we say it, we're on the same page,
19 that -- because part of it was cut off,
20 we just want to make sure that we could
21 show you the entire page, rather than a
22 cutoff page.
23 MS. McENROE: And Scott,
24 could you mark that as Exhibit 15?

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1 MR. SIMMER: I will mark
2 that, I'm sorry.
3 MS. McENROE: Yes --
4 THE WITNESS: Mine is marked
5 as Exhibit 15.
6 BY MR. SIMMER:
7 Q. And I'm sorry, that's
8 exhibit?
9 A. 15.
10 Q. 15.
11 A. Yes, sir.
12 Q. I'll identify it for the
13 record as a page off the Cegedim website
14 that -- that was the identical link as
15 was in Ms. Birklin's e-mail to -- to the
16 witness. And it's entitled Suspicious
17 Order Monitoring Programs.
18 If you'd just compare at
19 least what you can see of the two, it is
20 identical content?
21 So when -- under -- you see
22 in the middle of this, this particular
23 exhibit, it says, "Confidence in
24 compliance."

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<p>1 Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And you see where it says,</p> <p>4 "Establish a statistically defensible</p> <p>5 order pending system"?</p> <p>6 Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you know what that's in</p> <p>9 reference to?</p> <p>10 A. I do not recall.</p> <p>11 Q. Okay. Under operational</p> <p>12 effectiveness, where you see where it</p> <p>13 says, "Improve detection of suspicious</p> <p>14 orders, quick clearance of legitimate</p> <p>15 ones."</p> <p>16 Do you see that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you have any idea what</p> <p>19 that's in reference to?</p> <p>20 A. I mean it appears to me that</p> <p>21 Ron is trying to sell a service to</p> <p>22 wholesale distributors.</p> <p>23 Q. Okay. And use those same</p> <p>24 kind of language that we've talked about</p>	<p>1 Hart, right, what -- what Ms. Birklin had</p> <p>2 sent you?</p> <p>3 A. Yes.</p> <p>4 Q. You see in your e-mail dated</p> <p>5 April 11, 2011, where you say, "We never</p> <p>6 put anything in writing for this. Can</p> <p>7 we?"</p> <p>8 What it is -- what is it</p> <p>9 you're asking Ms. Hart?</p> <p>10 A. So there's -- there is a</p> <p>11 little background to this. So as with</p> <p>12 any conference that Ron held, and I think</p> <p>13 we all, everybody in this room knows</p> <p>14 this, when -- when DEA issues guidance,</p> <p>15 they are very vague in what they are --</p> <p>16 what they are putting in writing.</p> <p>17 So with suspicious order</p> <p>18 monitoring and -- and with Ron's</p> <p>19 conferences, DEA was represented there</p> <p>20 and they talked about suspicious order</p> <p>21 monitoring as one of the topics. And</p> <p>22 they talked about how, you know, what was</p> <p>23 good in the past is not necessarily going</p> <p>24 to be good going forward. There's just</p>
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<p>1 earlier in terms of identifying</p> <p>2 legitimate orders, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. And the third one</p> <p>5 under strong defensibility. Do you see</p> <p>6 where I'm talking?</p> <p>7 A. Yes, I do.</p> <p>8 Q. You see where it says, "Make</p> <p>9 decisions built on statistics and math,</p> <p>10 not best guesses."</p> <p>11 Do you see that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Do you know whether</p> <p>14 the company engaged with Mr. Buzzeo or</p> <p>15 Cegedim or -- or any of those folks</p> <p>16 working with them for these services?</p> <p>17 MS. McENROE: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: If so, I'm</p> <p>20 unaware.</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. Okay. Do you know, in</p> <p>23 response are you -- I'm sorry.</p> <p>24 You send this on to Janet</p>	<p>1 so much scrutiny on that particular</p> <p>2 subject that things are going to get much</p> <p>3 tougher.</p> <p>4 So if you don't have a good</p> <p>5 program in place, it may be in your best</p> <p>6 interest to solicit Ron's services and</p> <p>7 have them come into your DC and formulate</p> <p>8 a program for you.</p> <p>9 We actually had several</p> <p>10 meetings internally with myself, with</p> <p>11 loss prevention, with government affairs,</p> <p>12 to test our program and make sure that</p> <p>13 the algorithm's in place and the -- that</p> <p>14 the program was working as it was</p> <p>15 intended.</p> <p>16 So that's where -- that's</p> <p>17 the pieces that are missing, as far as we</p> <p>18 never put anything in writing for this.</p> <p>19 Q. So let me ask you a little</p> <p>20 bit further about that. You say you had</p> <p>21 meetings internally. You met with loss</p> <p>22 prevention. Who in loss prevention?</p> <p>23 A. I believe Andy Palmer.</p> <p>24 Q. Who in government affairs?</p>

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1 A. Janet Hart.
2 Q. And you say that you tested
3 your program. How did you test your
4 program?
5 A. Actually pharmacy operations
6 was also part of that, Maggie Perritt,
7 and Maggie is the one who tested the
8 algorithm to make sure that, from an
9 ordering standpoint, everything was
10 working as it was designated to work.
11 Q. And you are referencing an
12 algorithm. Whatever -- what is the
13 algorithm you're referencing?
14 A. That -- that is beyond my
15 intellectual ability -- I don't know.
16 Q. Who is it that we would talk
17 to about that algorithm?
18 A. Maggie Perritt.
19 Q. How do you spell her last
20 name?
21 A. P-E-R-R-I-T-T.
22 Q. And what department did she
23 work?
24 A. Pharmacy operations.

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1 Q. Where was that housed?
2 A. Camp Hill.
3 Q. So there was an actual
4 algorithm that was put into the computer
5 to identify suspicious orders, is that
6 what you're testifying?
7 A. I'm not sure what it
8 identified. But it was part of the
9 excessive order and suspicious order
10 monitoring program.
11 Q. And you -- your testimony is
12 that she undertook a test of some kind to
13 see that it was working properly?
14 A. That is correct.
15 Q. And do you know what she
16 actually did?
17 A. We asked her to put it in
18 writing so that the DCs again would have
19 that as supporting evidence that we have
20 a program in place that was tested.
21 Q. And you asked her to put
22 what in writing?
23 A. The results of her findings.
24 Q. Did she ever do that?

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1 A. Not that I'm aware of.
2 (Document marked for
3 identification as Exhibit Rite Aid
4 Mitchell-16.)
5 BY MR. SIMMER:
6 Q. I'll hand you what we've
7 marked as Mitchell Exhibit Number 16.
8 Identify it for the record
9 as a one-page e-mail with the Bates
10 Number Rite_Aid_OMDL_0050634.
11 And it's an e-mail from you
12 dated June 3, 2011, to Janet Hart and
13 the -- you see in the body of the e-mail
14 where you say, "We need to get the
15 explanation on suspicious order
16 monitoring in writing. Thought Maggie
17 was going to put something in writing.
18 Did you ever get anything?"
19 Is that what you were just
20 talking about?
21 A. Yes, sir.
22 Q. That Ms. Perritt was
23 supposed to put the results of her test
24 in writing and she never did?

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1 A. That's correct.
2 Q. Do you have any idea why she
3 never put it in writing?
4 A. I do not. She left the
5 company. And I'm not -- I mean I can't
6 recollect when, but that may have been
7 part of it.
8 Q. It may have been part of
9 what?
10 A. Why she didn't do it.
11 Q. That she left before she got
12 it completed, is that what you're
13 testifying?
14 A. It's possible. I don't
15 recall.
16 Q. Had she left at the time you
17 sent this e-mail?
18 A. I don't recall.
19 Q. I'll hand you what we've
20 previously marked as Chapman Exhibit 1.
21 MS. McENROE: So you're just
22 leaving it that way?
23 MR. SIMMER: Yeah, we're not
24 going to re-mark it.

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1 BY MR. SIMMER:
2 Q. I'll identify it for the
3 record as a one-page e-mail, Bates
4 Number Rite_Aid_OMDL_0020412.
5 Okay. This is two e-mails.
6 I want to look at the -- the earlier
7 e-mail. Do you see the e-mail address
8 where it says [REDACTED]@riteaid.com?
9 A. Yes, sir.
10 Q. Is that you?
11 A. Yes.
12 Q. We've never seen that e-mail
13 used anywhere else in any of your
14 documents. Is there some reason why it's
15 different here that you're aware of?
16 A. There were two separate
17 systems at Rite Aid. They had a system
18 called SYSM which was S-Y-S-M, that was
19 an internal Rite Aid communication only.
20 And being that I worked in distribution,
21 that's what the D-I-S stands for and then
22 initials.
23 So if you were in pharmacy
24 it would have been PMP or PMD. Loss

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1 prevention would have been LPN, et
2 cetera.
3 Q. So this is a different kind
4 of communication system other than
5 e-mails?
6 A. That's correct.
7 Q. And why was this system
8 used?
9 A. Internal communication for
10 Rite Aid.
11 Q. Why not use regular e-mail
12 system?
13 MS. McENROE: Objection to
14 form.
15 THE WITNESS: No idea. It
16 was in place when I started. They
17 did do away with it at some point,
18 probably after I left.
19 BY MR. SIMMER:
20 Q. So this is an e-mail on
21 November 7th, 2009.
22 Do you see that?
23 A. Yes, sir.
24 Q. So as of 2009, SYSM was

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1 still in place, right?
2 A. Apparently so, yes, sir.
3 Q. So how did you know to use
4 SYSM sometimes and use the regular e-mail
5 system other times?
6 MS. McENROE: Objection to
7 form.
8 THE WITNESS: There was no
9 rhyme or reason why you would use
10 either one. It just -- I don't
11 know.
12 BY MR. SIMMER:
13 Q. Okay. I'll direct your
14 attention to your e-mail -- or I guess --
15 I guess you don't call this e-mail. What
16 is it then?
17 A. SYSM.
18 Q. SYSM. Okay. In your SYSM
19 on this date, do you see where you says
20 the first paragraph is talking about
21 someone who died. And the second
22 paragraph, you say, "Kim Birklin's room
23 last week at the conference was supposed
24 to be either direct billed or put on

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1 someone from LVP's card, but it wasn't."
2 I don't need to read the
3 whole paragraph. But what's going on in
4 that paragraph, if you could explain it
5 to us?
6 A. Kim's expenses weren't paid
7 for, so I ended up paying for it myself.
8 Q. Okay. And what conference
9 are we talking about?
10 A. This would be Ron's
11 conference.
12 Q. Okay. And that's a
13 conference that was the 2009 conference,
14 the one we looked at earlier where you
15 were asking permission to attend?
16 A. Yes, sir.
17 Q. Okay. Do you see the
18 last -- or excuse me, second-to-the-last
19 paragraph, where you say, "Good
20 conference. We have one takeaway that we
21 need to better address, suspicious order
22 monitoring."
23 Do you recall why you said
24 this to your boss, Mr. Chapman?

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1 A. Absolutely. As I just
 2 talked about a couple minutes ago,
 3 when -- when DEA spoke at the conference,
 4 they talked about all the standards were
 5 going to be much more stringent, much
 6 tougher. And of course, me being as
 7 diligent as I was about making sure that
 8 the DCs were compliant, I took that as,
 9 you know, maybe our program is not good
 10 enough, maybe we need to test it to make
 11 sure.

12 So all of the things that we
 13 just talked about, about, you know,
 14 having the follow-up meetings with Maggie
 15 and Andy and Janet to test the program
 16 and make sure it worked as it was
 17 designed to work, we're kind of -- but
 18 that was after this particular e-mail
 19 obviously.

20 But I wanted to make sure
 21 that Rick was aware that DEA's stance was
 22 going to be very aggressive in monitoring
 23 suspicious orders.

24 Q. And you're saying that

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1 because that's what you heard at the
 2 Buzzeo conference, right?

3 A. Yes, sir.

4 (Document marked for
 5 identification as Exhibit Rite Aid
 6 Mitchell-17.)

7 BY MR. SIMMER:

8 Q. I'll hand you what we marked
 9 as Mitchell Exhibit 17. I'll identify it
 10 for the record as an e-mail string with
 11 Bates -- one-page e-mail string with
 12 Bates ending OMDL_0050632.

13 A. Okay.

14 Q. Could I direct your
 15 attention to, I guess, the second --
 16 third e-mail on the string. It's from
 17 you to Janet Hart dated November 16,
 18 2010.

19 Do you see where I am?

20 A. Yes, sir.

21 Q. In the body of the e-mail,
 22 do you see where you say, "When I get
 23 back to the office next week, we need to
 24 talk about suspicious order monitoring.

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1 At Buzzeo's conference last week and what
 2 we have in place probably isn't
 3 sufficient anymore. I'll give you a
 4 shout so we can 'brainstorm.'"

5 Do you remember this?

6 A. Yes, sir.

7 Q. Have you seen this e-mail
 8 before?

9 A. Yes, sir.

10 Q. Did you see it yesterday?

11 A. I did.

12 Q. Okay. And when you say that
 13 they -- your suspicious order monitoring
 14 program probably isn't sufficient
 15 anymore, that's because what you've just
 16 seen at the Buzzeo conference is
 17 something that has alerted to you that
 18 there have been some changes, you think,
 19 right?

20 MS. McENROE: Objection to
 21 form.

22 THE WITNESS: It's been
 23 alerted that they are going to
 24 take a very stringent approach.

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1 So, again, being that we haven't
 2 been inspected by DEA in a couple
 3 years, I wanted to make sure that
 4 what we had was sufficient. I was
 5 questioning whether or not it was,
 6 so -- which is what prompted this
 7 e-mail.

8 BY MR. SIMMER:

9 Q. And she responds to you
 10 later that same day saying, "Sounds
 11 good."

12 A. Correct.

13 Q. Did you ever have this
 14 conversation with Janet Hart?

15 A. Yes, sir. We had -- these
 16 are the meetings that I've been
 17 referencing.

18 Q. Okay. So when you talked
 19 about actually doing this algorithm test,
 20 that's what -- what series of meetings
 21 followed this communication to Ms. Hart,
 22 right?

23 A. That is correct, sir.

24 Q. And this is where you also

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1 said you involved some others in the
2 company to undertake that review as well,
3 right?
4 A. That is correct.
5 Q. Did you ever bring any
6 Buzzeo or any third-party vendors to look
7 at the Rite Aid suspicious order
8 monitoring program to do an audit of any
9 kind?
10 MS. McENROE: Objection to
11 form.
12 THE WITNESS: Ron had done
13 audits in the past. I did not
14 bring anybody on after 2009 to
15 conduct audits on the program.
16 BY MR. SIMMER:
17 Q. I think you said that the
18 last audit he had done was in 2002,
19 right?
20 A. That's correct.
21 Q. He hadn't done any since
22 then, right?
23 A. Not that I recall no.
24 Q. And as far as you know,

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1 nobody else, Mr. Buzzeo or anybody else,
2 had come in and done an audit of the
3 company's suspicious order monitoring
4 program since 2002, right?
5 MS. McENROE: Objection to
6 form.
7 THE WITNESS: Other than
8 DEA.
9 BY MR. SIMMER:
10 Q. Other than what you talked
11 about earlier, right?
12 A. Yes, sir.
13 Q. Okay. And which there was
14 no written record though, right?
15 MS. McENROE: Objection to
16 form.
17 THE WITNESS: That is
18 correct, sir.
19 (Document marked for
20 identification as Exhibit Rite Aid
21 Mitchell-18.)
22 BY MR. SIMMER:
23 Q. I'll hand you what we marked
24 as Mitchell Exhibit Number 18.

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1 A. Thank you.
2 Q. I'll identify it for the
3 record as Rite_Aid_OMDL_0046564. And
4 then there's a native attachment that is
5 Bates-numbered 046565.
6 Your e-mail to a group of
7 individuals, dated November 29, 2010, do
8 you see that?
9 A. Yes, sir, I do.
10 Q. And do you see where you
11 say, "Can you please capture all orders
12 for the month of November that stores
13 ordered more than the allowed amount?
14 Please e-mail to me no later than close
15 of business Friday, December 3, 2010."
16 Do you see that?
17 A. Yes, sir.
18 Q. What prompted you to request
19 this information?
20 A. That, I honestly do not
21 recall.
22 Q. And who are the individuals
23 that you're requesting this information
24 from?

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1 A. They are the DEA
2 coordinators at the pharmacy DCs.
3 Q. So that would be Marian
4 Wood. And then the second name is?
5 A. Jennifer Wyatt. And she was
6 in Tuscaloosa, Alabama.
7 Q. Barbara Lucero?
8 A. Barbara Lucero was in
9 Woodland, California. And Kimberly
10 Birklin was in Liverpool, New York.
11 Q. Okay. And then the e-mail
12 right above it from Ms. Wood dated
13 December 3rd, 2010, she says, "As
14 requested. FYI, it seems there was a
15 recall which caused many RxPs" --
16 A. Pharmacists.
17 Q. -- "to order more
18 hydrocodone. In addition, there was a
19 manufacturer out, which caused higher
20 than normal orders."
21 Do you see that?
22 A. I do.
23 Q. Do you have any recollection
24 of what she's referencing here?

<p style="text-align: right;">Page 318</p> <p>1 A. I've seen the e-mails over 2 the last day, but I don't recollect it as 3 something that I remember. 4 Q. If you look at her 5 attachment, this is like the threshold 6 log that we looked at before, I believe, 7 right? 8 A. Yes, sir. 9 Q. So this is for the month of 10 November, as I take it, right? 11 A. That's what I had asked for. 12 So I would assume so. 13 Q. So -- there isn't an actual 14 product description here. It's just the 15 item number. But we can tell what some 16 of the reasons were. Do you see, for 17 example, the second item on this list -- 18 this is Store 10526, Item 602732. 19 Ordered amount, 66. Order shipped, 24. 20 A. Yes, sir. 21 Q. Do you see, "Reason: Not 22 called"? 23 A. Mm-hmm. I do. 24 Q. So whenever I see not called</p>	<p style="text-align: right;">Page 320</p> <p>1 smaller sizes. 2 Q. And, again, you don't have 3 any recollection of what prompted this 4 review of these thresholds to determine 5 whether they should be cut back? 6 A. I do not. I'm sorry. 7 Q. And so the table she's 8 giving us is every instance during the 9 month of November where there was a 10 threshold -- or an order that had been 11 cut back? 12 A. That's correct. 13 Q. Can I direct your attention 14 to the fourth item from the bottom. It's 15 got a little green box over the store 16 number. 17 Do you see that? 18 A. Yes, sir. 19 Q. 2389. Do you see that? 20 A. I do. 21 Q. And that one over in the 22 reason says, "Exception, allowed up to 23 15." So this is an exception made over 24 the threshold, right?</p>
<p style="text-align: right;">Page 319</p> <p>1 on here, that means nobody ever called 2 the pharmacy, right? 3 A. That would be my assumption 4 as well. 5 Q. And we may have talked about 6 this. But I'm not exactly sure what your 7 answer was. When it says not called, 8 that just simply reflects no one ever 9 called the pharmacy? 10 MS. McENROE: Objection to 11 form. 12 THE WITNESS: That would be 13 correct. 14 BY MR. SIMMER: 15 Q. Okay. So without going into 16 each of these items -- so the subject 17 line to your e-mail, the one that you 18 sent on November 29th, it says "Threshold 19 Cutbacks"? 20 A. Yes, sir. 21 Q. What's a threshold cutback? 22 A. We would be reviewing the 23 thresholds again and potentially cutting 24 them back. So we would be shipping</p>	<p style="text-align: right;">Page 321</p> <p>1 A. Correct. 2 Q. Any other reason given other 3 than just that an exception was given for 4 that pharmacy? 5 A. There were numerous stores 6 within the Rite Aid network that had 7 exceptions based on volume. 8 Q. But the only reason that 9 it's documented here is simply that there 10 was an exception made, right? 11 A. That's what I see as well. 12 Q. Okay. 13 MR. SIMMER: Can we go off 14 the record. 15 THE VIDEOGRAPHER: The time 16 is now 3:51 p.m. We're going off 17 the record. 18 (Short break.) 19 THE VIDEOGRAPHER: The time 20 is now 4:07 p.m. 21 We are back on the record. 22 MR. SIMMER: I have no 23 further questions of the witness 24 at this time. I would, however,</p>

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1 reserve any kind of further
2 questioning, assuming you do some
3 cross.
4 But in addition, we reserve
5 the right to come back and conduct
6 further examination given the
7 lateness of the production last
8 night. We have some additional
9 documents that we haven't had a
10 chance to incorporate in today's
11 examination. Anything in there
12 that we may request to come back
13 in a limited additional
14 examination.
15 MS. McENROE: Is that the 17
16 pages from last night or are you
17 talking about something else?
18 MR. SIMMER: I don't know
19 how many pages there are -- I
20 don't know how many pages were
21 produced, but there were some
22 additional pages that we got last
23 night.
24 MS. McENROE: Understood.

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1 We -- we have a different view of
2 it, but we can deal with that if
3 it becomes an issue.
4 I have a couple follow-up
5 questions for the witness. Is it
6 okay if I do it sitting here, or
7 do you want me to switch?
8 I'm happy to do it from
9 here.
10 MR. SIMMER: If you just
11 want to do it from there, that's
12 great.
13 MS. McENROE: Okay, great.
14 - - -
15 EXAMINATION
16 - - -
17 BY MS. McENROE:
18 Q. Hi, Mr. Mitchell. I'm Elisa
19 McEnroe. I represent Rite Aid and I'm
20 here on your behalf today as well. You
21 understand that?
22 A. Yes, I do.
23 Q. I have just a couple
24 questions for you. And we appreciate you

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1 being here.
2 When did you cease your
3 employment with Rite Aid?
4 A. January 2012.
5 Q. That was a number of years
6 ago, correct?
7 A. Seven years ago last Friday,
8 correct.
9 Q. And throughout the
10 discussion today there have been some
11 references to the concept of an excessive
12 order monitoring program and discussion
13 of a suspicious order monitoring program.
14 Do you, generally speaking, recall those
15 discussions?
16 A. Yes, I do.
17 Q. I'd like to direct your
18 attention to Exhibit 12 please.
19 A. Okay.
20 Q. And in particular the second
21 page of it, which I understand, and
22 counsel represented, and I agree, that
23 this is just a couple pages out of a much
24 larger document.

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1 So the second page has the
2 Bates Rite_Aid_OMDL_0020727. Are you on
3 the same page as I am?
4 A. Yes, I am.
5 Q. And what is the header of
6 this document?
7 A. DEA regulatory guideline.
8 Q. What's the title under that?
9 A. Title VI, Excessive Order
10 Monitoring.
11 Q. For the record, could you
12 please read the purpose section that's
13 right under that?
14 A. "To provide for monitoring
15 of all controlled substances orders as to
16 detect suspicious orders."
17 Q. Is that your understanding
18 of what the purpose was of this
19 particular guideline?
20 MR. SIMMER: Objection to
21 form.
22 BY MS. McENROE:
23 Q. You may answer.
24 A. Yes.

<p style="text-align: right;">Page 326</p> <p>1 Q. Could you explain for me, 2 just to make sure the record is clear, 3 the relationship, if any, between 4 excessive order monitoring and suspicious 5 order monitoring? 6 A. Excess -- 7 MR. SIMMER: Objection to 8 form. Asked and answered. 9 BY MS. McENROE: 10 Q. You may answer. 11 A. Okay. I'm sorry. Excessive 12 is anything out of the norm with size. 13 Where suspicious order monitoring, 14 suspicious was anything that, regardless 15 of size, frequency of the order, and an 16 order pattern that would be different 17 from a normal distribution. 18 Q. Looking at this DEA 19 regulatory guideline, it's titled 20 Excessive Order Monitoring and it has 21 that purpose. 22 Do you understand there's 23 some relationship between excessive order 24 monitoring and looking for suspicious</p>	<p style="text-align: right;">Page 328</p> <p>1 copy of a Rite Aid Corporation DC 2 self-assessment program regulatory 3 checklist. 4 Do you see that? 5 A. Yes. 6 Q. Okay. I'd like to direct 7 your attention, and I know we had a 8 little bit of trouble with which page is 9 which. But I'm going to go with the 10 numbers at the bottom that say like 2 of 11 16, 3 of 16. Do you see that? 12 A. Yes. 13 Q. Could you please flip to 3 14 of 16? 15 And at the top of that 16 document, do you see that, in the upper 17 right-hand corner, it says A -- 18 MR. SIMMER: Just a second, 19 Elisa. Where are you? 20 MS. McENROE: Oh, I'm just 21 trying to -- 22 MR. SIMMER: No, but these 23 numbers you're referring to are 24 not on -- on the exhibits we're</p>
<p style="text-align: right;">Page 327</p> <p>1 orders or potentially suspicious orders? 2 MR. SIMMER: Objection to 3 form. 4 BY MS. McENROE: 5 Q. You may answer. 6 A. Yes, I do. 7 Q. Can you explain that to me 8 please. 9 MR. SIMMER: Same objection. 10 BY MS. McENROE: 11 Q. You may answer. 12 A. Okay. Excessive orders at 13 times could potentially point out a 14 suspicious order. 15 Again, during my time with 16 Rite Aid, I'm not aware of any suspicious 17 orders that were identified. 18 Q. Can you keep Exhibit 12 out, 19 but also at the same time take out 20 Exhibit 7 please. 21 You'll recall this is a 22 document you went over with counsel 23 earlier. And I'm not going to try and 24 take very much time with it. But it is a</p>	<p style="text-align: right;">Page 329</p> <p>1 looking at. So I don't know what 2 we're -- 3 MS. McENROE: Oh, you know 4 what, mine is printed out 5 differently than yours. So maybe 6 I can try and identify the page 7 differently, if that makes sense. 8 The -- the page I was trying 9 to get to has A.08.02 at the top. 10 MR. SIMMER: Okay. Thank 11 you. 12 MS. McENROE: Great. Do you 13 have -- do you have it? 14 MR. SIMMER: Mm-hmm. 15 BY MS. McENROE: 16 Q. Okay. And are you there, do 17 you have it? 18 A. Yes, I am. 19 Q. Okay. 20 MS. McENROE: And we are all 21 literally on the same page I hope. 22 BY MS. McENROE: 23 Q. Okay. So looking at Item 13 24 there, I think this is something we</p>

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1 discussed earlier. Could you read that
2 for me, what the question is?
3 A. "Verify that the excessive
4 order monitoring policy is known and
5 available."
6 Q. And is that referring to the
7 page we were looking at in Exhibit 12 a
8 moment -- a moment ago?
9 MR. SIMMER: Objection to
10 form.
11 BY MS. McENROE:
12 Q. You may answer.
13 A. Yes, it is.
14 Q. And so earlier counsel was
15 asking you about where the words
16 suspicious order monitoring was in
17 Exhibit 7. But looking at this, it's
18 referring to Exhibit 12, which in its
19 purpose says it's to detect suspicious
20 orders; is that right?
21 MR. SIMMER: Objection,
22 form.
23 Are you testifying for the
24 witness?

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1 MS. McENROE: I'm not, I'm
2 asking him a question.
3 MR. SIMMER: A leading
4 question of your own witness?
5 MS. McENROE: Your objection
6 is noted for the record.
7 Your objection is noted for
8 the record. Thank you.
9 BY MS. McENROE:
10 Q. You may answer.
11 MR. SIMMER: Objection to
12 form.
13 THE WITNESS: That's
14 correct.
15 BY MS. McENROE:
16 Q. So we were just looking at
17 13. Now take a look at Item 15. Do you
18 see that?
19 A. Yes.
20 Q. And it says, "Is there a
21 written excessive order monitoring
22 procedure?"
23 Did you see that?
24 A. Yes.

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1 Q. And is that referring to the
2 same thing as in Exhibit 12?
3 MR. SIMMER: Objection to
4 form. Leading.
5 BY MS. McENROE:
6 Q. You may answer.
7 A. It is.
8 Q. Okay. You can set those two
9 aside.
10 MS. McENROE: Can I get two
11 exhibit stickers.
12 (Document marked for
13 identification as Exhibit Rite Aid
14 Mitchell-19.)
15 BY MS. McENROE:
16 Q. So the copying is not so
17 great. It's a little bit dark. But I'm
18 handing you what I marked as Exhibit 19.
19 Do you remember a line of
20 questioning earlier where counsel was
21 asking you about DEA audits at the
22 Perryman facility?
23 MR. SIMMER: Objection to
24 form. Misstates prior testimony.

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1 BY MS. McENROE:
2 Q. Do you remember at all today
3 discussing DEA auditing at the Perryman
4 facility?
5 MR. SIMMER: Objection to
6 form.
7 BY MS. McENROE:
8 Q. You may answer.
9 A. Yes, I do.
10 Q. Do you remember a question
11 about whether there was any written
12 record of those audits?
13 A. Yes, I do.
14 Q. Do you remember what you
15 testified?
16 MR. SIMMER: Objection to
17 form. The record speaks for
18 itself.
19 BY MS. McENROE:
20 Q. You may answer.
21 MR. SIMMER: Testimony
22 speaks for itself.
23 BY MS. McENROE:
24 Q. You still may answer.

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1 A. The DEA does not provide
2 documentation unless there are findings.
3 Q. What is this Exhibit 19 that
4 I just handed you?
5 A. This is a summary that I put
6 together from the DEA visit in Perryman
7 in 2005 to the senior vice president of
8 supply chain, my boss at the time, Robbie
9 Roberson and Tim Peifley, who was the
10 general manager in Perryman that just
11 basically memorializes the outcome and
12 the findings -- or the lack of findings,
13 therefore, and -- with the DEA audit in
14 Perryman.
15 MR. SIMMER: Just one
16 minute. Which part of this
17 exhibit were you referencing?
18 There was a question just about
19 what does it say. And then you
20 start talking about something in
21 this exhibit. I have no idea
22 where he's -- where he's
23 referencing.
24 MS. McENROE: So I asked the

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1 question, and he answered it. I
2 was asking him what the document
3 is. And he just described it to
4 me. So I'm going to ask some more
5 follow-up questions, and if you
6 have questions after, you're
7 welcome to ask.
8 MR. SIMMER: Okay. I tell
9 you what. Move to strike.
10 Nonresponsive. The question is,
11 "What does the exhibit say?" And
12 then he answered something
13 completely different. Move to
14 strike. Nonresponsive.
15 MS. McENROE: All right.
16 Well, I disagree with your motion,
17 but we can deal with that at a
18 later date.
19 BY MS. McENROE:
20 Q. So, Mr. Mitchell, looking at
21 the first e-mail in this chain, it's an
22 e-mail from you to Wilson Lester copying
23 Robbie Roberson and Tim Peifley; is that
24 right?

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1 A. Yes.
2 Q. And you testified earlier
3 about Wilson Lester. Who is Robbie
4 Roberson?
5 A. He was vice president of
6 logistics and my direct boss at the time.
7 Q. Who is Tim Peifley?
8 A. General manager of Perryman
9 distribution center.
10 Q. And Peifley is
11 P-E-I-F-L-E-Y; is that right?
12 A. Correct.
13 Q. In the e-mail can you read
14 the first sentence after Wilson?
15 A. "Wilson, the investigators
16 from the DEA office in Baltimore have
17 departed from Perryman with very positive
18 comments regarding our pharmacy
19 operation."
20 Q. Do you mind going on to read
21 the next sentence?
22 A. The audit was conducted for
23 Monday, September 19th, through
24 Wednesday, September 21st. They were

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1 very impressed with the level of detail
2 and ownership that the staff in Perryman
3 has with controlled substances.
4 Q. Then you list a number of
5 things. And then you have a sentence
6 that starts with, "The closing comments."
7 Can you read that?
8 A. "The closing comments
9 mention specifically that they have no
10 words of advice for the staff for
11 improvement. It was a flawless audit."
12 Q. Do you recall if this is
13 consistent with your memory of this 2005
14 DEA audit of the Perryman facility?
15 MR. SIMMER: Objection to
16 form.
17 THE WITNESS: Yes.
18 BY MS. McENROE:
19 Q. Would you have expected, in
20 your experience, to have gotten a written
21 confirmation from DEA of their outcome of
22 this audit?
23 MR. SIMMER: Objection to
24 form. Leading.

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1 THE WITNESS: No, I would
2 not.
3 (Document marked for
4 identification as Exhibit Rite Aid
5 Mitchell-20.)
6 BY MS. McENROE:
7 Q. I'm going to hand you what
8 I'm marking Exhibit Number 20.
9 Do you recognize this
10 document?
11 A. Yes.
12 Q. What is it?
13 A. It's a memorialization from
14 Tim Peifley to me and Tim's boss, Robert
15 Shovel, of the outcome of the 2009 DEA
16 audit in Perryman.
17 Q. And there's a lot written
18 here. You can take some time and review
19 it if you'd like. And I'll direct your
20 attention to the end of the e-mail once
21 you've had a chance to take a look at it.
22 A. Okay.
23 Q. Could you read the last
24 bullet point in Tim Peifley's e-mail that

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1 starts at the top of the second page of
2 this exhibit?
3 MR. SIMMER: Objection to
4 form.
5 BY MS. McENROE:
6 Q. You can read it.
7 A. "There will be no official
8 report as a result of this visit. There
9 will be no memorandums of understanding
10 as a result of the audit. He stated,
11 'Everything we saw meets the requirements
12 of what we came to see. I'm happy, very
13 happy.'
14 Q. And can you read the
15 sentence after that?
16 A. "Thanks to everyone who made
17 this an exceptionally successful audit of
18 an immensely critical part of our
19 operation and the supply chain's overall
20 mission as well."
21 Q. Those portions that you just
22 read out loud, are those consistent with
23 your recall of the audit in 2009 of the
24 Perryman facility?

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1 A. Yes, they are.
2 MS. McENROE: I have nothing
3 further.
4 - - -
5 EXAMINATION
6 - - -
7 BY MR. SIMMER:
8 Q. Sir, could you look back at
9 your e-mail summary in Exhibit 19 that
10 you were just asked some questions about?
11 And so this is
12 September 2005, correct?
13 A. Yes, sir.
14 Q. Is there anywhere in your
15 summary that you put together here a
16 reference to the fact that the DEA had
17 actually audited the suspicious order
18 monitoring program?
19 A. I did not, no.
20 Q. Is there anywhere in your
21 summary that the DEA audited the
22 excessive order monitoring program?
23 A. I did -- no, sir, there is
24 not.

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1 Q. Look at Exhibit 20. Now,
2 you didn't create this record.
3 Mr. Peifley did, right?
4 A. Yes, sir.
5 Q. So these are his words, not
6 yours, right?
7 A. That's correct, sir.
8 Q. And in his summary, did he
9 summarize anywhere that the DEA audited
10 the Rite Aid excessive order monitoring
11 program?
12 A. No, sir.
13 Q. In his words anywhere, did
14 he say that the DEA audited the Rite Aid
15 suspicious order monitoring program?
16 A. No, sir.
17 MR. SIMMER: No further
18 questions.
19 MS. McENROE: I just have a
20 quick follow-up.
21 - - -
22 EXAMINATION
23 - - -
24 BY MS. McENROE:

<p style="text-align: right;">Page 342</p> <p>1 Q. Looking at both Exhibits 19 2 and 20, do you have a recall of an 3 understanding of whether the DEA actually 4 would have audited, looked at, the 5 excessive or suspicious order monitoring 6 policies as part of these audits? 7 MR. SIMMER: Objection to 8 form. Document speaks for itself. 9 BY MS. McENROE: 10 Q. You may answer. 11 A. I can only speak to the 12 audit in 2005 because I was physically 13 there during that audit. It was a very 14 comprehensive audit and, yes, they did 15 review the excessive order monitoring 16 program as well as the documents that the 17 DC was utilizing upon calling stores. 18 2009, I have no recollection 19 of that at all. 20 Q. Do you believe -- do you 21 have any reason to believe that they did 22 not audit the excessive or suspicious 23 order monitoring programs in 2009? 24 MR. SIMMER: Objection as to</p>	<p style="text-align: right;">Page 344</p> <p>1 have reviewed in order to evaluate the 2 excessive order monitoring program, 3 right? 4 MS. McENROE: Objection to 5 form. 6 THE WITNESS: I recall them 7 looking at all of our SOPs as well 8 as the log that was presented 9 today as we were talking about, 10 you know, what the DCs do. 11 BY MR. SIMMER: 12 Q. And as you've testified 13 multiple times today, at no time had 14 there been ever a report of any 15 suspicious orders of any kind, right? 16 MS. McENROE: Objection to 17 form. 18 THE WITNESS: That's 19 correct. As far as I know, that's 20 correct. 21 BY MR. SIMMER: 22 Q. So those logs only reflect 23 some suspicious orders -- excuse me -- 24 strike that.</p>
<p style="text-align: right;">Page 343</p> <p>1 form. 2 THE WITNESS: I have no 3 reason to believe, but again, I 4 have no knowledge that they did or 5 they didn't. 6 MS. McENROE: Thank you. No 7 further questions. 8 - - - 9 EXAMINATION 10 - - - 11 BY MR. SIMMER: 12 Q. Just a couple follow-ups. 13 You said -- you just answered that you 14 believe they did in 2005. 13 years ago, 15 that's your recollection that they did, 16 right? 17 A. Yes, sir. 18 Q. And the records that they 19 would have reviewed, those would have 20 been those excessive order logs we looked 21 at, right? 22 A. Yes, sir. 23 Q. There's nothing else in the 24 distribution center logs that they could</p>	<p style="text-align: right;">Page 345</p> <p>1 Those logs reflect a series 2 of potentially excessive orders where a 3 call was made to the pharmacy, and some 4 of which were increased over the 5 threshold, others were not, right? 6 MS. McENROE: Objection to 7 form. 8 THE WITNESS: I don't recall 9 any being increased. But yes, the 10 document is what you are 11 referencing. 12 BY MR. SIMMER: 13 Q. Well, we looked at some of 14 the examples in the one log we looked at 15 where the pharmacist said, "I need the 16 entire shipment," right? 17 A. That's correct. 18 Q. And so that was approved in 19 those instances, right? 20 MS. McENROE: Objection to 21 form. 22 THE WITNESS: It was not 23 above the threshold. 24 BY MR. SIMMER:</p>

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1 Q. And in some of those
2 examples they were, right?
3 MS. McENROE: Objection to
4 form.
5 THE WITNESS: There was one,
6 if -- if it's the one that you had
7 highlighted that I recall, maybe
8 fourth from the bottom, that was
9 already an exception.
10 So that was -- that was a
11 little bit different than the rest
12 of these.
13 BY MR. SIMMER:
14 Q. But the point here is that
15 the only thing the DEA actually looked at
16 were those records, right?
17 MS. McENROE: Objection to
18 form.
19 THE WITNESS: That would be
20 correct.
21 MR. SIMMER: Yeah, nothing
22 further.
23 MS. McENROE: I have nothing
24 further. Thank you so much,

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1 Mr. Mitchell.
2 MR. SIMMER: Thank you.
3 THE VIDEOGRAPHER: The time
4 is now 4:26 p.m. This concludes
5 today's deposition. We're going
6 off the record.
7 (Excused.)
8 (Deposition concluded at
9 approximately 4:26 p.m.)
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Page 348

1
2 CERTIFICATE
3
4
5 I HEREBY CERTIFY that the
6 witness was duly sworn by me and that the
7 deposition is a true record of the
8 testimony given by the witness.
9
10 It was requested before
11 completion of the deposition that the
12 witness, KEVIN MITCHELL, have the
13 opportunity to read and sign the
14 deposition transcript.
15
16
17
18 MICHELLE L. GRAY,
19 A Registered Professional
20 Reporter, Certified Shorthand
21 Reporter, Certified Realtime
22 Reporter and Notary Public
23 Dated: January 21, 2019
24
25 (The foregoing certification
26 of this transcript does not apply to any
27 reproduction of the same by any means,
28 unless under the direct control and/or
29 supervision of the certifying reporter.)
30
31
32
33
34

Page 349

1 INSTRUCTIONS TO WITNESS
2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.
8 After doing so, please sign
9 the errata sheet and date it.
10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.
14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.
21
22
23
24

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1 - - - - -
2 E R R A T A
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4 PAGE LINE CHANGE

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6 REASON: _____

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1 LAWYER'S NOTES

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1

2 ACKNOWLEDGMENT OF DEPONENT

3

4 I, _____, do

5 hereby certify that I have read the

6 foregoing pages, 1 - 352, and that the

7 same is a correct transcription of the

8 answers given by me to the questions

9 therein propounded, except for the

10 corrections or changes in form or

11 substance, if any, noted in the attached

12 Errata Sheet.

13

14

15 _____

16 KEVIN MITCHELL DATE

17

18

19 Subscribed and sworn

20 to before me this

21 _____ day of _____, 20____.

22 My commission expires: _____

23 _____

24 Notary Public